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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1996*

Addendum

ISRAEL

[26 February 1998]

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* The initial report submitted by the Government of Israel is contained in document CAT/C/16/Add.4; for its consideration by the Committee, see documents CAT/C/SR.183 and 184 and Official Records of the General Assembly, Forty-ninth session, Supplement No. 44 (A/49/44, paras. 159-171). For the special report, see CAT/C/33/Add.2/Rev.1; for its consideration, see CAT/C/SR.295, 296 and 297/Add.1 and Official Records of the General Assembly, Fifty-second session, Supplement No. 44 (A/52/44, paras. 253-260).

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Introduction

1. This report is submitted pursuant to article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force with regard to Israel on 2 November 1991.

2. The present report supplements the initial report submitted by Israel in 1994 (CAT/C/16/Add.4) and the report submitted in 1996 (CAT/C/33/Add.2/Rev.1). Thus, for a comprehensive review it should be read in conjunction with those reports.

3. The report is divided according to the articles of the Convention. Since article 16 of the Convention widens its scope to also include a prohibition on cruel, inhuman and degrading treatment or punishment, the discussion under each article should be construed as covering both torture and cruel, inhuman or degrading treatment or punishment.

INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION

Article 2 - Measures to prevent torture

Legislative measures bearing on the prohibition of torture and of cruel, inhuman or degrading treatment or punishment

Basic Law: Human Dignity and Liberty

4. In 1992, the Israeli Knesset enacted the Basic Law: Human Dignity and Liberty. The fundamental rights guaranteed in that basic law not only form the basis for interpretation of previous legislation and the limiting criteria for new laws; in addition, the Basic Law has itself stimulated numerous legislative efforts, in areas such as arrest and detention, searches and seizures, emergency legislation, privacy, imprisonment for civil debts, and the rights of patients, which aim to give the fullest practical realization of the principles embodied in the Basic Law.

5. Section 2 of Basic Law: Human Liberty and Dignity, which prohibits any "violation of the life, body or dignity of any person as such", and section 4 of the Basic Law, which grants all persons the right to protection against such violations, have constitutional status in Israel's legislative framework. The Supreme Court arguably has the power to void any legislation enacted after the entry into force of the Basic Law which violates the above provisions; previously enacted laws may not be deemed void by the Court for this reason, but they will be interpreted in accordance with the fundamental principles of the sanctity of life, integrity of the body and primacy of human dignity, broadly construed. These provisions in the Basic Law, then, may be deemed to constitute a general prohibition of cruel, inhuman or degrading treatment or punishment, including torture, and are binding both vis-à-vis public and private entities.

General Security Service Bill

6. The functions, powers and structure of the General Security Service (GSS) have, to date, not been determined in any law but solely, and partially,

in government decisions. Over the years, a process has developed of giving expression in legislation to various powers of the GSS - for example, in the Secret Monitoring Law, 5739-1979, in the Criminal Record and Rehabilitation Law, 5741-1981, in the Privacy Protection Law, 5741-1981, in the Equal Opportunities in the Workplace Law, 5748-1988, and others. However, all of these concern only piecemeal arrangements in specific areas. The status, structure, functions and powers of the GSS and the modes of supervision over its activity have not as yet been given an overall arrangement in legislation.

7. This does not mean, of course, that the GSS exists and acts outside the law. It is a division in the Office of the Prime Minister, and the legal basis for its activity, in those areas that have not been set out in legislation, is found in government decisions, by virtue of "the general powers of government" granted to it in accordance with section 40 of Basic Law: The Government, and subject to the legal constraints on the exercise of such powers (*see* H.C.J. 5128/94, *Federman* v. *Minister of Police*, 48(5) P.D. 647, 651-654).

8. Over the last few decades there has been a growing international trend towards setting out, in legislation, the activities of the various secret services, and several countries have enacted laws in this area. The proposed law is intended to fill the gap in Israeli law in all matters related to the structure, purpose, functions and powers of the GSS, as well as scrutiny over its activities.

9. Because the GSS activity is, by definition, classified and protected, the efficacy of normal mechanisms of control, deterrence and balance that exist in a democratic society to guard against governmental arbitrariness and abuse of its power, such as a free press, parliamentary supervision, public opinion and judicial review, is severely limited with regard to such organizations. It is thus particularly important to create effective institutionalized arrangements and mechanisms for scrutiny, control and review of the activity of the GSS. This is achieved in the bill by a range of provisions and mechanisms.

10. Under the proposed law, the GSS will be subject to the authority of the Government, in a manner similar to the Israel Defence Forces as set out in Basic Law: The Army. The Government will appoint the Head of the GSS, on the proposal of the Prime Minister. The Government will approve the objectives of the GSS's activity, and will establish various directives regarding the fulfilment of its functions, in accordance with and subject to the provisions of the proposed law, which also include parliamentary oversight.

11. The Prime Minister is responsible for the GSS on behalf of the Government. To this end he or she has been given various powers in the proposed law, including the authority to promulgate regulations and rules, with the approval of the Ministerial Committee for Service Affairs and the Knesset Committee for Service Affairs, in all matters relating to the implementation of the law. The Prime Minister is also the person who will approve GSS Directives determined by the head of the GSS.

12. Under the proposed law, the Government has to appoint a special Ministerial Committee for Service Affairs, headed by the Prime Minister, which will act in the name of the Government in matters which the Government will

determine. The law also prescribes provisions for the composition of the Committee, to ensure that it will remain compact and businesslike.

13. The Committee will have various functions, in particular with respect to scrutiny and oversight of the GSS's activity. It is empowered to approve regulations and rules in respect of the implementation of the law. It is also entitled to receive periodic reports from the head of the GSS, and may demand special reports upon request.

14. Under the proposed law, the Subcommittee for Secret Services of the Knesset Defence and Foreign Affairs Committee will be established as the "Knesset Committee for Service Affairs". Regulations and rules for the implementation of the law require the approval of this Committee. It is also entitled to receive periodic reports from the head of the GSS.

15. The proposed law determines, for the first time, the functions and powers of the GSS. The objective of the GSS consists principally of protecting the security of the State, its governance and institutions, from the threat of terrorism, espionage, and other, similar threats. To this end the task of the GSS is to foil and prevent unlawful activity aimed at harming the aforementioned objectives. The GSS is also given duties in the realm of protecting persons, information and sites, security classification and vetting, settling security procedures for bodies designated by the Government, gathering and receiving information, and giving counsel and situation appraisals to the Government and other bodies which it designates.

16. To carry out its objectives and functions, the GSS has been given various powers, including conducting investigations, gathering and receiving information, powers of arrest and search, and search powers for intelligence purposes.

17. Also, a service Comptroller, who is not an employee of the GSS, is to be appointed by the Prime Minister. The Comptroller will be subject to the provisions of the Internal Audit Law, 5752-1992, with slight modifications. Among other duties, the Comptroller is to assist the Government and the Ministerial Committee in fulfilling their various functions, and may be charged with other functions, including handling inquiries, complaints and disciplinary complaints against the GSS from the general public, as well as complaints by GSS employees.

18. In addition, the GSS will continue to be subject to the scrutiny of the State Comptroller by virtue of section 9 of the State Comptroller Law [Consolidated Version], 5718-1958, and of the Division for the Investigation of Police Misconduct in the Ministry of Justice under chapter 4.2 of the Police Ordinance [New Version], 5731-1971; and also, of course, to judicial review, first and foremost by the High Court of Justice.

19. The bill was adopted by the Israeli Government on 2 February 1998. It was then put on the Knesset table for further consideration.

Proposed amendment of the Evidence Ordinance

20. The proposed amendment seeks, *inter alia*, to bring the Evidence Ordinance [new Version] in line with Basic Law: Human Liberty and Dignity and with article 15 of the Convention. It is therefore discussed under that article.

Other measures bearing on the problem of torture and of cruel, inhuman or degrading treatment or punishment

The Kremnitzer Committee

21. Following a report in 1993 by the Comptroller of the Israel Police which examined the systemic response to acts of violence by police personnel, the Minister of Police (now renamed the Minister of Internal Security) appointed a public commission, headed by the former dean of the Law Faculty at the Hebrew University, Professor Mordecai Kremnitzer, to propose a plan of action for dealing with the issue. The Kremnitzer Committee, as it is called, issued its report in June 1994, which included specific recommendations for the prevention and deterrence of violence by police officers. These recommendations may be summarized as follows.

22. Prevention of police violence should be achieved by:

(a) Improvement in screening candidates for enlistment;

(b) Involving more women in detective and fieldwork, so as to "soften" the contact between the police and citizens;

(c) Examining the disciplinary profile of police personnel prior to promotion;

(d) Placing emphasis on the responsibility of commanders to transmit the educational message directly to their charges, and especially regarding the equality of all persons and the rights of minorities; and

(e) Videotaping investigations and field operations.

23. The response to incidents of violence should include:

(a) Distinguishing between severe violence and the use of force which does not amount to severe violence; the former cases, according to the committee's recommendation, should be adjudicated before a specially appointed Magistrate Court judge. Where there are acts attributed to a police officer and the officer admits to them, or where there exists unequivocal evidence against such officer, then dismissal from the Police should be mandatory;

(b) Any police officer who is convicted of severe violence should likewise be dismissed; and

(c) Occurrences of unlawful use of force which do not amount to severe violence should be dealt with in disciplinary proceedings or by senior commanding officers. Repeat occurrences should result in dismissal from the police force.

24. Following publication of the Kremnitzer Committee's report, the Israel Police adopted its recommendations, and the Minister of Police appointed an oversight committee to ensure their implementation. While the oversight committee has only recently begun to function actively, the Israel Police has taken several measures to implement the committee's recommendations, such as strict screening of candidates for enlistment in the police, including weighing of sociometric tests indicating capacity for self-control and interpersonal skills; periodic evaluations of performance; training workshops in questioning persons who are not designated as criminal suspects, as well as in prevention of violence, human rights and equality before the law (some of these workshops were taught by members of independent human rights groups); giving an annual prize for tolerance to particular precinct stations; publishing a newsletter on police ethics; and starting an experimental "community policing" project in 10 precincts. In addition, the disciplinary desk of the Israel Police was expanded to a fully-fledged department, with added personnel, to improve the efficiency and quality of handling disciplinary complaints.

25. The response of the Israel Police thus far in implementing the recommendations of the Kremnitzer Report has met with praise from at least one prominent independent civil rights group.

Public Defender's Office

26. In 1995, a national public defender's office was created by legislation. The major impetus for forming the new department derived from the difficulties encountered by the courts in appointing experienced criminal attorneys to represent indigent persons suspected of serious offences. While it is too early to assess the performance of the new, State-funded department, it is anticipated that the augmented protection of the rights of criminal defendants and detainees by a highly trained corps of criminal defence attorneys will result, among other things, in a decrease in violent treatment on the part of law enforcement officials.

Article 4 - Criminal Legislation

27. In 1994, the Penal Law was amended by a revision of the general part, which sets out the legal principles of Israeli criminal law. This amendment includes a revision of the provisions relating to attempt, assistance, encouragement and incitement. These provisions are a matter of particular importance in cases of physical or psychological abuse. The following are the relevant provisions of Chapter Five of the Penal Law, entitled "Derivative Offences"*:

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* As no official translation of the amendment is yet available, the above is an unofficial translation.

"Title One: Attempt

"What constitutes an attempt

A person attempts to commit an offence, if he - with intent to commit it - commits an act that does not only constitute preparation, provided the offence was not completed.

"Commission of offence is impossible

For purposes of attempt, it shall be immaterial that the commission of the offence was impossible, because of circumstances of which the person who made the attempt was not aware or in respect of which he was mistaken.

"Special penalty for attempt

If a provision sets a mandatory penalty or a minimum penalty for an offence, then it shall not apply to an attempt to commit that offence.

"Exemption for remorse

If a person attempted to commit an offence, he shall not bear criminal liability therefor, if he proved that, of his own free will and out of contrition - he stopped its commission or substantively contributed to the prevention of results on which the completion of the offence depends; however, the aforesaid shall not derogate from his criminal liability for another completed offence connected to the same act.

"Title Two: Parties to an Offence

"Perpetrator

"(a) 'Perpetrator of an offence' includes a person who committed the offence jointly or who committed through another.

"(b) Participants in the commission of an offence, who perform acts for its commission, are joint perpetrators, and it is immaterial whether all acts were performed jointly or some were performed by one person and some by another.

"(c) A perpetrator of an offence through another is a person who contributed to the commission of the act by others who acted as his instrument, the other person being in one of the following situations, within their meaning in this Law:

(1) he is a minor or mentally incompetent;

(2) he lacks control;

(3) he has no criminal intent;

(4) he misunderstands the circumstances;

(5) he is under duress or has a justification.

"(d) for the purposes of subsection (c), if the offence is conditional on a certain perpetrator, then the person in question shall be deemed to have committed that offence even if the condition is only met by the other person.

"Incitement

If a person causes another to commit an offence by means of persuasion, encouragement, demand, cajolery or by means of anything else that constitutes the application of pressure, then he incites an offence.

"Accessory

If a person does anything, before an offence or during its commission, to make its commission possible, to support or protect it, or to prevent the perpetrator from being taken or the offence or its spoils from being discovered, or if he contributes in any other way to the creation of conditions for the commission of the offence, then he is an accessory.

"Penalty of accessory

The penalty for being an accessory to the commission of an offence shall be half the penalty determined by legislation for the commission of that offence; however, if the penalty set is:

(1) the death penalty or mandatory life imprisonment, then his penalty shall be 20 years' imprisonment;

(2) life imprisonment, then his penalty shall be 10 years' imprisonment;

(3) a minimum penalty, then his penalty shall not be less than half the minimum penalty;

(4) any mandatory penalty, then it shall be the maximum penalty and half thereof shall be the minimum penalty.

"Attempted incitement

The penalty for attempting to incite another to commit an offence shall be half the penalty for the commission of the offence itself; however, if the penalty set is:

(1) the death penalty or mandatory life imprisonment, then his penalty shall be 20 years' imprisonment;

(2) life imprisonment, then his penalty shall be 10 years' imprisonment;

(3) a minimum penalty, then his penalty shall not be less than half the minimum penalty;

(4) any mandatory penalty, then it shall be the maximum penalty and half thereof shall be the minimum penalty.

"Exemption for remorse

"(a) If a person was an accessory or if he incited another to commit an offence, he shall not bear criminal liability for being an accessory or for incitement, if he prevented the commission of the offence or its completion, or if he informed the authorities of the offence in time, in order to prevent its commission or its completion, or if - to that end - he acted to the best of his ability in some other manner; however, the aforesaid shall not derogate from his criminal liability for another completed offence connected to the same act.

"(b) For the purposes of this section, 'authorities' means the Israel Police or any other body lawfully empowered to prevent the commission or completion of an offence.

"Other or additional offence

"(a) If, while committing an offence, a perpetrator also committed another or an additional offence, and if, under the circumstances, an ordinary person could have been aware of the possibility that it would be committed, then:

(1) the other joint perpetrators shall also bear liability for it; however, if the other or additional offence was committed intentionally, then the other joint perpetrators shall bear liability for it only as an offence of indifference;

(2) a person who incited or was an accessory to it shall also bear liability, as an offence of negligence, if such an offence exists based on the same facts.

"(b) If the court found an accused guilty under subsection (a) (1) for an offence for which there is a mandatory penalty, then it may impose a lighter penalty on him."

Article 10 - Education and information

Israel Police

28. The Israel Police and the Prisons Service maintain thoroughgoing training programmes for personnel at all levels, in which their obligations regarding the respect and realization of civil and human rights are taught. These training programmes take three basic forms: required courses for all entry-level personnel, and subsequently for all personnel as a condition prior to promotion in rank; voluntary continuing education seminars on specific topics, which typically last between several days and one week; and periodic refresher courses.

29. Required courses for Israel Police personnel are taught at the National Police Academy in Shfar'am or at the Senior Officers' College near Netanya. All police employees must pass a two-month basic training course, which

includes a total of 47 hours of instruction in the areas of professional ethics, providing service to citizens, police powers, use of force, unlawful commands, and disciplinary violations.

30. The required courses for sergeants, captains, and senior staff officers also devote between 42 to 80 hours to instruction regarding the above matters, as well as to modules on competence in human relations, conflict resolution, investigation of police personnel, media in a democracy, citizens' complaints, family violence, treatment of juvenile offenders, legal and practical duties deriving from the right to human dignity, and inculcation of awareness of human rights. In addition, continuing education courses on specific topics, such as methods of investigation, arrest and searches, and so on, involve practical instruction in observance of human rights.

General Security Service

31. The GSS conducts courses and seminars at all levels of command and employment. These courses and seminars aim to instil principles and norms of human dignity and fundamental rights in employees, both at basic training and throughout the GSS. Special attention is given to the instruction of interrogators and their superiors. Particular emphasis is given to the rule of law and the GSS's commitment to the balance of interests required by law and by the practice of the courts.

Article 11 - Review of interrogation practices and treatment of persons subjected to detention and imprisonment

Review of interrogation practices

32. As explained under article 2, the Government of Israel recognized the importance of establishing systems of review of interrogation practices to ensure that GSS investigators do not violate the guidelines.

The State Comptroller's Office

33. In 1995, the State Comptroller's Office completed an examination of the GSS's investigator's unit during the years 1990-1992. The State Comptroller's findings, which were submitted to a special subcommittee of the Knesset State Comptroller Committee, found several instances of deviations from the Landau Commission's guidelines, and recommended measures to ensure compliance. The findings themselves have not yet been made public.

Ministerial oversight

34. In accordance with the recommendations of the Landau Commission, a special Ministerial Committee headed by the Prime Minister was established in 1988 to review the GSS interrogation guidelines periodically.

35. In April 1993, the Ministerial Committee determined that several changes should be made in the GSS guidelines. On the basis of the committee's recommendations, new guidelines were issued to GSS investigators. The new guidelines clearly stipulate that the need and justification for the use of limited pressure by investigators must be established in every case, according to its own special circumstances. The guidelines emphasize that the use of

exceptional methods is intended only for situations in which vital information is being concealed, and not as a way to humiliate or mistreat those under investigation. They place a duty on the investigator to consider whether the means of pressure the use of which is being contemplated is proportional to the degree of foreseeable danger of the activity under investigation. Senior GSS staff must approve in writing the use of measures deemed to constitute moderate physical pressure, once again on a case-by-case basis, in light of the above criteria. In any case, it is expressly forbidden to injure or torture suspects, to deny them food or drink, to refuse permission to use the bathroom, or to subject the person to extreme temperatures for prolonged periods.

36. Since then, the guidelines have been reviewed from time to time by the Ministerial Committee, in the light of conclusions drawn from recent experience. The Ministerial Committee also reviews, in real time, specific cases of persons under investigation who are known to be active members of the military echelons of terror groups, and with regard to whom there are grounds to believe that they have knowledge of future terror attacks in the planning or execution stages.

Judicial review

37. All complaints of alleged mistreatment during investigation may be challenged directly to the Supreme Court sitting as a High Court of Justice. Any party who believes he or she has been wronged - not only the detainees themselves or their families, but, under the extremely flexible rules of standing in Israeli law, also virtually any person or group who claims an interest in legal or humanitarian issues involved - may have its petition heard by the High Court of Justice within 48 hours of being filed. Over the past few years several petitions have been filed with the Court seeking injunctions to forbid the GSS from using any force, or particular methods of pressure, throughout the investigation. The Court reviews each of these cases for their compliance with the detailed guidelines, and often, with the approval of the petitioner or his attorney, hears sensitive evidence in camera to examine whether the magnitude of foreseeable or imminent danger, and the grounds for believing that the suspect actually has vital information which is crucial to preventing such danger, are sufficiently clear to justify the use of the specific methods of interrogation in question. Two recent cases may be summarized briefly as follows.

38. Raaji Mahmad Saba (HCJ 5304/97) was arrested by the security services on 27 August 1997, on the grounds that he was a member of the armed wing of Hamas, the Islamic terrorist organization that has been responsible for many terrorist attacks, including the suicide bomb attacks on Israeli civilians in recent years.

39. On 14 September, Mr. Saba (through his own counsel) petitioned the Supreme Court, alleging that he was being subjected to torture during interrogation (this petition is currently pending before the Supreme Court). That same day the Supreme Court, in the light of this serious claim, made an interlocutory order requiring the Attorney-General to respond immediately to these allegations. In a night sitting on 15 September, counsel for the Attorney-General replied that no physical means of interrogation were to be used against the petitioner at this stage. As a result of this, the Supreme

Court dismissed the petition, but ordered the Attorney-General to personally oversee the interrogation process, in order to ensure that no unlawful forms of interrogation were used.

40. In addition, Mr. Saba twice petitioned the Israeli Supreme Court against a decision prohibiting him from meeting with his lawyer. The Supreme Court, having heard the attorney for the GSS and having received intelligence materials submitted to it with the consent of the petitioner, decided that the measure was justifiable on security grounds and in the interests of the investigation. The prohibition against meeting with his lawyer was later lifted. Three weeks later, the Supreme Court was again petitioned by Mr. Saba (through his counsel) who complained that he had once more been denied the right to meet with his lawyer. On the same day, the Court also received a notice from the attorney representing the GSS, stating that the prohibition would cease that night. On the basis of this notice Mr. Saba's counsel withdrew the petition. The prohibition was indeed lifted that night. On 18 October, Mr. Saba's interrogation ceased, since which time he has been held in administrative detention and is due for release in April 1998.

41. A number of facts in Mr. Saba's case may be highlighted. Firstly, at no point has Mr. Saba denied the accusations against himself, namely that he is a member of the military wing of Hamas, and has himself been involved in the organization of terrorist attacks. Additionally, while the GSS admitted that his interrogation was a matter of necessity, since Mr. Saba was in possession of information that was crucial for the investigation, to prevent imminent terrorist attacks. In any event, the measures used were designed to avoid both physical and mental harm, something that has been verified by several medical examinations of Mr. Saba. Finally, it should be noted that Mr. Saba has had recourse to the highest judicial authority in the country which, because of the seriousness of Mr. Saba's allegations, heard each of his petitions immediately.

42. It should be emphasized that the Supreme Court has convened - so far - on three occasions to hear his petitions and has even instructed (in order to ensure that there is no doubt that Mr. Saba's basic rights are being respected) the Attorney-General to personally oversee the course of Mr. Saba's interrogation.

43. The second case in point is that of Abd al-Rahman Ismail Ghanimat. Mr. Ghanimat is accused of being the leader of the Surif terrorist cell, which was responsible for the killing of tens of Israeli civilians and soldiers. He has admitted in investigation that he is a member of this cell and has admitted involvement in the terrorist actions attributed to it. These actions include the following: shootings on cars driven by Israelis between November 1995 and July 1996, including gunfire attacks on 9 December 1995, in which Jonathan Moschitz (44) and his 10-year-old daughter Lior were injured; on 16 January 1996, in which Oz Tivon, a 28-year-old doctor and Yaniv Shimel, his 21-year-old passenger, were killed; on 9 June 1996, in which Yaron (26) and Efrat Unger (26), a married couple, were killed; and on 26 July 1996, in which Uri Monk (53) was killed together with his 30-year-old son Ze'ev and his 25-year-old daughter-in-law Rachel. In each of these instances, Mr. Ghanimat was personally involved.

44. Following the July murders, the cell changed its modus operandi, deciding to abduct and murder soldiers. On 9 September 1996, members of the cell abducted Sharon Edri, a 20-year-old soldier, and within minutes of taking him, murdered him. The cell attempted further abductions unsuccessfully.

45. On 21 March 1997, members of the cell bombed the Apropos cafe in Tel Aviv in which three women, Anat Winter-Rosen (31), Yael Gil'ad (32) and Michal Midan Avrahami (31), were killed and 30 civilians injured.

46. It should be noted that the uncovering of the Surif terrorist cell in the wake of the Apropos bombing, and the investigation of various members of this group, led to the discovery of a large explosive device in the village of Surif - identical to the one used in the Apropos bombing and which, according to the investigation conducted into the members of the cell, was intended for a further attack similar to the Apropos bombing. Additionally, the body of Sharon Edri, which had been missing for over six months since his abduction, was located as a result of the interrogation of members of the Surif cell.

47. Following the arrest of Mr. Ghanimat and his subsequent confession, his investigators had reasonable grounds to suspect that he was in possession of additional information which would have helped in the prevention of further imminent terrorist attacks. It is clear therefore that the methods of interrogation used against Mr. Ghanimat were necessary in order to obtain as quickly as possible information that was essential in uncovering further terrorist actions, which would have led to the loss of further civilian lives.

48. Concerning the allegation made by Mr. Ghanimat that he was not permitted to sleep and was forced to sit for hours with a thick sack over his head, the attorney for the State argued that because of the urgency of the investigation and the fact that in the opinion of the GSS, Mr. Ghanimat was in possession of information vital for the prevention of further terrorist attacks, the investigation had to be intensive and Mr. Ghanimat was indeed not permitted to sleep whenever he so desired. Nevertheless, he was allowed to sleep whenever the requirements of the investigation so permitted. With regard to the sack covering Mr. Ghanimat's head, this was only used when he was in the presence of other suspects and was simply to prevent communication between them.

49. In the light of the above, it should be clear that urgent steps were necessary in order to stop further terrorist attacks. In any event, the measures used could hardly be viewed as forms of torture in any objective sense.

50. At the end of January, the investigation was concluded and an indictment was served on Mr. Ghanimat containing several counts, including all of the incidents recounted above. A remand hearing was held on 8 February and the next hearing is due for mid-March, Mr. Ghanimat being represented by an attorney of his choice.

51. In several other cases, the Court issued interim injunctions forbidding the use of physical pressure during GSS interrogations, which remained in force throughout the investigation. See, e.g., HCJ 2210/96, *Algazal v. General Security Service* (not yet published). Another petition, which challenged the legality of the GSS interrogation guidelines then in force and demanded that the secret portion of the Landau Commission report be

made public, was denied by the Court, inter alia because it was not linked to the application of these guidelines in the circumstances of a particular case (HCJ 2581/91, *Salkhat et al. v. State of Israel et al.*, 47(4) P.D. 837).

Treatment of persons subjected to detention or imprisonment

52. The fundamental right of detainees and prisoners to conditions ensuring basic maintenance of their human dignity has been articulated and enforced in a long line of judgements of the Israel Supreme Court. In *Yusef v. Director of Central Prison*, for example, the Court held that "the order of life in the prison by its nature requires an infringement of liberties which a free person enjoys, but such infringement must derive from the nature and needs of imprisonment, and not beyond that .... [t]he purposes of criminal punishment may not be achieved through violation of the prisoner's dignity or his humanity .... It is the right of every person in Israel who is sentenced to imprisonment (or lawfully detained) to be confined in conditions that allow for civilised human life .... Only 'the most serious reasons', such as special security measures that must be taken, may justify any deviation from this basic approach." (HCJ 540-546/84, 40 (1) P.D. 567, 573, see also HCJ 114/86, *Weill v. State of Israel et al.*, 41 (3) P.D. 477 (minimal civilized arrangements include the right to conjugal visits)).

53. Most of the basic conditions granted to prisoners and detainees as a matter of right, as well as limitations on measures that may impair their liberty or dignity and procedures for adjudicating prisoners' complaints, are provided for in legislation, primarily in the Prisons Ordinance [New Version], 5732-1971, and regulations thereunder. Other privileges or services have been given the status of a legal right by decisions of the Supreme Court, such as the presence in the prison facility of a social worker to deal with certain prisoner's concerns (*Yusef v. Director of Central Prison*, supra). Still other privileges, such as use of television and telephone, visits beyond the minimum provided by law, purchase of goods from the prison canteen, or receipt of newspapers and books, are granted as a matter of discretion by the prison director; in practice, these latter privileges are routinely granted.

Segregation and solitary confinement

54. Under section 21 (a) of the Prisons Regulations, 5738-1978, a senior prison official may order that a prisoner be confined separately from the rest of the prison population if he is convinced that doing so is necessary for reasons of State security, for maintenance of security, order or discipline in the prison, for protection of the safety or health of the prisoner or other prisoners, or at the prisoner's own request. This type of separate confinement is a preventive, not a punitive measure, and is to be distinguished from solitary confinement, which is discussed below.

55. Segregated prisoners have all of the rights and privileges of ordinary prisoners, except for conditions deriving by their nature from the fact of segregation. Such prisoners remain in their cells during the day hours, except for their daily excursion, family visits, medical care, visits with legal counsel, parole officer, social worker and so on. They are always accompanied by a warden whenever they are outside of their cell. Prisoners convicted of a criminal offence who are held in segregation for more than three months may be granted additional privileges and personal effects

(Part 14 of the Prison Commissioner's standing orders). The term of segregation is for 48 hours when ordered by a senior prison official; it may be extended for additional periods up to a total of 14 days with the consent of the director of the prison. Thereafter, separation may be extended only by order of the prison director, with the consent of the Commissioner of Prisons, provided that the justification for separation must be reviewed periodically (between 48 hours and two months, depending on the type of case in question), or at earlier intervals if the prisoner requests his separation. Any prisoner who is confined separately for a period exceeding eight months may lodge an appeal to the Commissioner of Prisons, who decides whether the separation will continue or cease. Certain classes of prisoners or detainees are segregated as a matter of law or policy from the rest of the prison population, such as known drug addicts or persons under administrative detention, and persons suspected or convicted of security-related offences.

56. Solitary confinement, on the other hand, is one of several punitive measures that may be imposed on a prisoner for violation of the prison code of conduct (section 56 of the Prisons Ordinance). Solitary confinement may be imposed only by the director or deputy director of the prison. As with all punitive measures, the decision to place a prisoner in solitary confinement may not be taken except following an investigation and a hearing at which the prisoner may hear the charges and evidence against him, and may defend himself properly (section 60 of the Prisons Ordinance). The maximum term of solitary confinement is 14 days, though the prisoner may not serve more than seven days consecutively, and must be given a break of at least seven days before solitary confinement is resumed.

57. All decisions regarding segregation and solitary confinement may be appealed directly to the appropriate District Court, and the District Court's decision may be appealed to the Supreme Court.

Contacts with the outside world

58. Immediately upon the arrest of any person, notification must be made to a relative or other person close to the detainee regarding the fact of the arrest and the place of detention.

59. Other rights of incarcerated persons to maintain contacts with the outside world vary according to the type of detention.

Visitation rights

60. Prisoners who have been convicted and sentenced for a criminal offence have the right to receive visitors, apart from legal counsel, at least once every two months, beginning after three months of imprisonment; such visitation rights may be increased as a privilege for good behaviour (section 47 (b) of the Prisons Ordinance). Persons who have been formally charged with a criminal offence have the right to receive visitors at least once a month (regulation 27A (b) of the Prison Regulations), and are to be given "every reasonable opportunity" to have contact with their friends and legal counsel (section 45 of the Prisons Ordinance). Persons who have been detained for criminal investigation, and have not yet been formally indicted, are not allowed visitors except with the permission of the police official in charge of the investigation.

61. Administrative detainees have a right to receive visits from immediate family members every two weeks; more frequent visits, as well as visits by persons other than immediate family and legal counsel, may be granted at the discretion of the director of the prison. The total number of visitors in any particular visit is limited to three persons in addition to the detainee's spouse and children, unless the prison director permits otherwise. The visitation rights of administrative detainees may be restricted only for reasons of State security. If such visitation rights are withheld for more than two months, the detainee may appeal before the Minister of Defence. All restrictions on the visitation rights of administrative detainees must be reviewed at least once every two months, if not earlier at the request of the detainee (regulation 11 of the Emergency Powers (Detention) (Conditions of Confinement in Administrative Detention) Regulations, 5741-1981). As with all decisions affecting the detainee or imprisoned convict, restrictions on visitation rights may be appealed before the District Court, and thereafter to the Supreme Court if necessary.

Correspondence

62. Prisoners who have been convicted and sentenced may write a first letter upon entering the prison, and then may write and receive correspondence freely after a period of three months. Detainees who have not been formally indicted are granted the right to maintain correspondence upon permission of the official in charge of the criminal investigation, or according to a court order. All detainees and prisoners who have the right to maintain correspondence are provided with writing paper, and may be exempt from postal expenses if the director of the prison decides that the prisoner's financial situation warrants such an exemption (regulation 32 of the Prisons Regulations).

63. Administrative detainees have the right to receive mail, and may normally send four letters and four postcards per month, not including correspondence with legal counsel or with official authorities (regulation 14 of the Emergency Powers (Detention) (Conditions of Confinement in Administrative Detention) Regulations, 5741-1981), or more with the permission of the prison director. The right of administrative detainees to send and receive mail may be restricted by the prison dire or if he is convinced that doing so is necessary for reasons of State security; in such circumstances, the prison director does not have to notify the detainee that a letter written by or to him has not been forwarded, except in the case of letters to or from family members (Id.).

Telephone

64. Until recently, the use of a telephone by prisoners and detainees was not granted by law, although it is routinely granted in practice. Under the recently enacted Criminal Procedure (Enforcement Powers - Arrest and Detention) Law, 5756-1996, detainees are specifically granted the right to use a telephone. Under both the current law and the previous regime, detainees who have not been formally indicted may have use of the telephone if the official in charge of the criminal investigation decides that such use will not impair a criminal investigation being undertaken at that time.

Furloughs

65. Detainees who have not yet been convicted and sentenced are not granted furloughs except by court order or by special permission in extenuating circumstances. While the right of convicted and sentenced prisoners to furloughs is not provided for in primary legislation, furloughs are granted according to the provisions of Prisons Commission standing order 12.05.01 of 1 December 1992, which has the status of law (section 80C (a) of the Prisons Ordinance). Such prisoners are categorized, within 30 days of their incarceration, into one of three groups for the purpose of determining their rights to furloughs: those who may not be granted furloughs except by permission of the Minister of Internal Security, either because their leaving the prison may pose a danger to public order and security, or due to an outstanding arrest warrant, or those who are detained by virtue of an extradition or deportation order; those who may be given furloughs according to conditions determined by the Israel Police; and those who may be granted furloughs with no such conditions. In general, prisoners have the right to furloughs after having completed one quarter of their sentence, or three years, whichever is earlier. Prisoners who are sentenced to life imprisonment may be granted furloughs only after their sentence is commuted to a specific period by the President of the State.

66. The length of the furlough is between 36 and 96 hours, and the frequency varies between once every three months and once a week (from Friday afternoon to Sunday morning), depending on the type of offence which the prisoner committed, his behaviour record in the prison, the type of rehabilitation programme in which the prisoner is participating, and other considerations. The interval between furloughs may be shortened in order to enable the prisoner to observe religious holidays outside of prison, or for family or medical reasons.

67. In addition, furloughs may be granted even though the prisoner has not completed the minimum portion of his sentence noted above, or even if the interval between furloughs has not transpired, in special circumstances, such as births, marriages or deaths in the family, memorial services, vocational testing, preparation of a rehabilitation programme, or medical reasons.

68. Persons imprisoned in the context of civil proceedings may be granted furloughs of 48 hours after having completed one quarter of their term of imprisonment or three months, whichever is earlier, and additional furloughs of 48 hours once every three months thereafter. If the term of civil imprisonment is four months or less, then the prisoner may be granted a furlough after having completed half of his sentence.

Conjugal visits

69. Under standing orders now in force, conjugal visits are allowed only for criminal prisoners who are serving long sentences and are not eligible for furloughs. The Prisons Service and the Ministry of Internal Security are currently investigating the possibility of extending this privilege to all persons incarcerated for criminal offences who are not granted furloughs.

Articles 12 and 13 - Procedures for complaints and disciplinary and criminal proceedings

70. The actions of law enforcement officials are subject to several overlapping legal institutions for review and sanctions. In general, each arm of the law enforcement authorities has disciplinary procedures, which may be initiated by the person claiming a violation, by other entities, or by the authorities themselves; all public servants are subject to the provisions of the criminal law; and detainees or prisoners may apply directly to the courts for relief against the action or decision in question.

Israel Police

71. Disciplinary proceedings are initiated by submission of a complaint to the disciplinary department of the Personnel Division at Central Headquarters or to one of its several branch offices. The Police may initiate disciplinary proceedings when it becomes aware of violations from other sources (e.g. statements of witnesses in the course of investigations or information forwarded by police personnel). In addition, the Department for Investigation of Police Personnel (DIPP) in the Ministry of Justice, which is responsible for most criminal investigations against police officers, transfers files to the Disciplinary Department of the Police both when the actions complained of fall short of a criminal offence but constitute a prima facie disciplinary violation, and also when criminal proceedings are brought against a police officer for actions which may entail parallel disciplinary sanctions.

72. If the Disciplinary Department, upon investigating the incident, finds that there is sufficient evidence of an infraction, then the matter is referred to a disciplinary tribunal, composed of either a single judge or a three-judge panel, depending on the gravity of the violation. (See generally Police (Disciplinary Proceedings) Regulations, 5749-1989; Police (Definition of Disciplinary Offences) Regulations, 5715-1955; Police Ordinance (New Version), 5731-1971, chapter 5.)

73. Alongside the disciplinary sanctions that may be imposed by a tribunal or single judge, the Police is bound to consider administrative sanctions against an officer who violates the law or internal standing orders. Administrative sanctions may be imposed at any time during the disciplinary or criminal proceedings, as well as after they are concluded. Such sanctions include dismissal from the police force, suspension, transfer to another position or department, demotion, postponement of promotion, and probation.

74. In 1992, a special department was set up at the Ministry of Justice - the Department for Investigation of Police Personnel (DIPP) - to investigate allegations of criminal conduct by police generally. Criminal investigations against police officers may be initiated by a complaint filed with the DIPP by the victim or his representative, by the DIPP itself as a result of information submitted to it by independent human rights groups or by entities within the Israel Police. A preliminary screening is carried out by a DIPP staff lawyer, who decides either to open an investigation or to close the file if the acts accused of do not give rise to a criminal offence (in the latter case the file may be transferred back to the Police for appropriate disciplinary measures). In the course of investigation, the DIPP staff takes

testimony from the complainant, the suspect and other witnesses, as well as any other evidence relevant to the case. If the investigation indicates sufficient evidence of a criminal offence, then the file is transferred to the District Attorney's Office in the region where the offence occurred, or, in cases of unlawful use of force, to the State Attorney's Office, for a final decision as to whether to file criminal charges against the police officer. Under current guidelines, all criminal trials against police officers are prosecuted by the District Attorney's office. The DIPP may also decide that the police officer should stand trial in disciplinary proceedings for the unlawful use of force, in lieu of criminal proceedings.

75. Following are statistics compiled by the Israel Police and the DIPP regarding treatment of disciplinary and criminal complaints, respectively.

Unlawful use of force by police officers
Number of complaints and results of investigation

Circumstances	1993	1994	1995	1996 a/
Investigation	119	95	97	70
Arrest	524	611	554	384
Conditions of detention	25	35	187	100
Refusal of citizen to identify himself or to accompany police officer	17	37	59	64
Search of suspect or premises	103	99	109	81
Violation of public order	110	122	233	106
Violation of order or discipline in a detention facility	44	34	26	35
Use of crude language	1	1	4	2
Traffic offences	101	120	161	113
Carrying out orders of the Execution Office (for civil judgement debts)	93	71	43	28
Holding persons in custody	103	40	47	54
Abuse of authority	283	286	334	70
Disputes between neighbours	2	6	4	2
Family disputes	1	1	1	1
Private disputes	4	5	4	13
On-duty dispute between two police officers	18	31	16	21
Argument between drivers	1	7	32	3
Training incidents	1	1	12	-
Demonstrations b/	-	-	1	32
Total files received	1 960	1 861	2 155	1 301
Referred for disciplinary trial	280	208	184	104
Final recommendation to file criminal indictment	52	40	53	20
Total files completed (including files from previous years)	1 979	1 876	2 001	1 428

a/ 1996 figures are for January-July.

b/ Demonstrations were inserted as a statistical category in 1996.

Disciplinary investigations and results		
Type of proceedings	**1994**	**1995**
Charge sheets (three-judge panel)	252	251
Complaints (single judge)	217	49
Disciplinary indictments adjudicated (all offences)		
Charge sheets	301	215
Complaints	217	51
Files received from DIPP		
Regarding use of force - recommendation to file criminal charges (total number of officers involved)	41 (64)	50 (92)
Regarding use of force - with recommendation to file disciplinary charge sheet (total number of officers involved)	168 (246)	127 (180)
Regarding use of force - with recommendation for trial before a single disciplinary judge (total number of officers involved)	79 (93)	47 (55)
Recommendation to weigh disciplinary sanctions (total number of officers involved)	307 (388)	366 (459)

76. Between 1992 and July 1996, DIPP investigated 211 cases involving the use of firearms, and 25 cases involving the use of force, or threat of using force, in order to extract a confession. In 1993, 15 officers were tried in criminal proceedings for involvement in offences amounting to assault; 12 of these officers were convicted and 3 were acquitted. In 1994, 10 officers were convicted of such offences in criminal proceedings. In one noteworthy case, 5 police investigators in the Minorities Division of the Jerusalem Region were convicted in July 1995 for unlawful use of force in investigating suspects (Cr.F. 576/91, in the Jerusalem District Court). In September 1995 the defendants were sentenced to varying terms of imprisonment. The case is currently on appeal in the Supreme Court.

77. In 1994, 22 police officers were dismissed from the force, 2 of whom as a result of their involvement in violent offences (down from 18 dismissals as a result of violent offences in 1993); 13 others were dismissed for "unsuitability", which includes those who were involved in repeated incidents of unlawful use of force (in 1993, as a result of a special effort by the Police to remove the most problematic employees, 30 officers were dismissed for unsuitability). In 1995, 29 officers were similarly dismissed for unsuitability, and no officers were dismissed in 1995 as a result of violent offences.

78. One officer was suspended in 1994 (out of a total of 20 suspensions that year) and 8 in 1995, as a result of involvement in violent offences; in 1993, no such suspensions were made.

79. Alongside the ordinary criminal and disciplinary processes described above, detainees held in police lock-ups have the right to file for habeas corpus relief against any unlawful treatment, including torture or other cruel, inhuman or degrading treatment on the part of police officers.

Prisons Service

80. Currently, the disciplinary and criminal investigation procedures regarding Prisons Service personnel differs from those followed with regard to police officers. Any prisoner or detainee under the care of the Prisons Service may file a complaint regarding ill-treatment or conditions of detention to the director of the prison. In cases involving use of force, a special committee within the Prisons Service investigates the complaint and transfers the file to the Attorney-General, who decides whether to institute disciplinary or criminal proceedings. Disciplinary trials are held before a tribunal within the Prisons Service, which is similar in structure and procedures to that of the Israel Police (see generally the Prisons Ordinance, sect. 101 *et seq.* and second schedule defining disciplinary offences; and the Prisons (Disciplinary Procedures) Regulations, 5749-1989), while criminal files are transferred first to the Israel Police, for completion of the investigation, and then to the appropriate District Attorney's office for filing a charge sheet.

General Security Service

81. Complaints by persons detained by the General Security Service regarding their treatment during investigation may be filed by the detainee or his or her legal representative, by local or international human rights organizations (complaints have been filed by the Public Committee Against Torture in Israel, the Physicians' Association for Human Rights, Amnesty International and the ICRC, among others). All complaints are examined by a complaints review unit within the GSS, which is subordinate to the State Attorney's Office. In the event that complaints are submitted to other governmental authorities, they are transferred to the above complaints unit, which is solely responsible for the initial investigation. Complaints that give rise to a suspicion that a criminal offence was committed are transferred to DIPP at the Ministry of Justice.

82. In 1995, 81 such complaints were received regarding treatment of detainees during GSS investigations. Thirty-four of these complaints were filed by the detainee, 23 by the detainee's legal counsel, 9 by local organizations and 15 by international organizations. In some instances, several entities filed complaints regarding a particular case. In four cases during 1995, the complaints unit found deviations from lawful authority; these cases were dealt with administratively within the GSS, including sanctions against the persons involved. In one case, that of Samed abd al Harizat, a GSS investigator was tried in disciplinary proceedings before a special tribunal.

83. Detainees in the custody of GSS also have the right to petition the High Court of Justice directly for habeas corpus relief.

General Security Service Comptroller

84. Initially, the GSS Comptroller was instructed to examine all claims of torture or maltreatment during interrogation. From 1987 until 1994, the Comptroller carried out this review function, initiating disciplinary or legal action against interrogators in cases where they have been found to have deviated from the legal guidelines.

Department for Investigation of Police Personnel

85. In 1994, in accordance with the recommendations of the Landau Commission that there be external oversight of General Security Service activities, responsibility for claims of maltreatment by GSS interrogators was also transferred to DIPP, described above, under the direct supervision of the State Attorney. The activity of DIPP appears to have had a significant deterrent impact on the incidence of intentional physical abuse of detainees and citizens by law enforcement officials, including GSS interrogators. Statistical information regarding the performance of the DIPP appears above.

Israel Defence Forces

86. The IDF maintains a strict policy of investigating every claim of mistreatment of detainees by IDF investigators. Soldiers who are found to have deviated from IDF standing orders forbidding violence or the threat of violence in interrogations are either court-martialled or have disciplinary proceedings brought against them, depending on the severity of the charges. In 1991, IDF also appointed a commission to review its interrogation practices and policies, headed by Major General (Reserve) Raphael Vardi, which resulted in the punishment of several interrogators. The Vardi Commission also submitted a list of recommendations designed to reduce the possibility of mistreatment by IDF investigators, which have been adopted.

Article 14 - Compensation to victims

87. Persons who have been subjected to torture or to any other unlawful mistreatment may, in addition to criminal, disciplinary or habeas corpus proceedings, initiate a tort action for damages against the perpetrators and against the State. In cases of assault, the State, like any private employer, is immune from liability unless it is found to have approved the unlawful assault or to have retroactively ratified it.

88. In addition, victims may receive a certain degree of compensation in the context of criminal proceedings under section 77 of the Penal Law, 5737-1977, which empowers a convicting court to order the payment to the victim of a crime for damages or suffering. Such compensation is recovered in the same manner as a fine. Currently, the maximum amount payable to a particular victim is fixed at NIS 60,000 (about US$ 17,000).

Article 15 - Rules of evidence

Goldberg Committee

89. In 1993, the Minister of Justice and the Minister of Police appointed a public committee, headed by Supreme Court Justice Eliezer Goldberg, to examine the efficacy of convictions based solely or almost solely upon the defendant's confession, the availability of retrial, and other topics related to the rights of those investigated by the police. The Goldberg Committee's report, published in 1994, included recommendations aimed at ensuring that false confessions were not extracted by illegal means. Among other things, the Committee recommended employment of investigation techniques and technologies which have been developed elsewhere, and which have proven effective in fulfilling the purposes of the criminal investigation without resort to violence; increasing supervision of investigation by senior investigators; videotaping of any interview at which the interviewee's lawyer is not present; and giving the judge who presides over detention hearings more of a role in actively investigating the conditions of detention and the investigation.

90. An amendment to the Evidence Ordinance [New Version], 1971 is currently being prepared at the Ministry of Justice to implement the above recommendations of the Goldberg Committee.

91. The draft law stipulates that the statement of a defendant given outside the court shall not be admissible as evidence if it was given pursuant to inhuman treatment, real violence, physical torture, mental torture, severe humiliation, or as a result of the threat of any of the above to the defendant. However, independent evidence of guilt that was discovered by an inadmissible confession will still be admissible.

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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1996

Addendum

CROATIA*

[2 March 1998]

* The initial report submitted by the Government of Croatia is contained in document CAT/C/16/Add.6; for its consideration by the Committee, see documents CAT/C/SR.253 and 254 and the Official Records of the General Assembly, Fifty-first Session, Supplement No. 44 (A/51/44, paras. 151-162).

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I. GENERAL INFORMATION

Introduction

1. Pursuant to article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Republic of Croatia submits its second periodic report on the implementation of the Convention.

2. After the initial report of the Republic of Croatia of 6 May 1996 and the recommendations adopted by the Committee against Torture (document CAT/C/SR.254. pp. 10-11), competent authorities of the Republic of Croatia have considered in great detail the said recommendations to develop efficient implementation of the Convention. Detailed information on the implementation of recommendations by the Committee against Torture are stated below in the section dealing with the implementation of specific provisions of the Convention.

3. Since the submission of the initial report of the Republic of Croatia, there have been a number of political and economic changes of great importance for the international position of the Republic of Croatia. As stated in the initial report, following nearly four years of unsuccessful negotiations, the Republic of Croatia in August 1995 undertook a comprehensive military-police operation to liberate previously occupied regions of the Republic of Croatia that were controlled by paramilitary formations of rebel Serbs. In the course of 1996, the Republic of Croatia took measures towards a better recovery of the liberated regions and enforcement of the state of security therein. These efforts included the additional deployment of 3,500 members of the police force, initiation of the project for reconstruction of destroyed facilities and the operation "Let's Save Lives" in cooperation with the International Federation of Red Cross and Red Crescent Societies and the Croatian Red Cross, for the purpose of developing better humanitarian, social and medical care for senior citizens in the region.

4. Pursuant to Security Council resolution 1037 (1995) of 15 January 1996, a United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) was established. The basic task of the Transitional Administration was reintegration of the remaining occupied parts of the Republic of Croatia into its constitutional and economic system in accordance with the Erdut Agreement of 12 November 1995, signed between the Republic of Croatia and representatives of the local authorities. The initial mandate of the Transitional Administration was to expire on 15 January 1997, but by virtue of subsequent Security Council resolutions, the mandate was prolonged until 15 January 1998. Local elections were held in the region under the Transitional Administration on 13 April 1997. Pursuant to the outcome of these elections, bodies of local administration and self-government were established, marking the beginning of the final phase of reintegration of the Croatian Podunavlje into the constitutional and legal system of the Republic of Croatia.

5. A further step towards the concrete establishment of long-term peace in the region was made under the Agreement on Normalization of Relations between the Republic of Croatia and the Federal Republic of Yugoslavia dated

23 August 1996. This agreement denotes, among other things, measures to be taken with a view to enabling the return of refugees and displaced persons to their domicile or other places of their choice, declaring a general amnesty for all crimes committed in armed rebellion or armed conflicts, though excluding the most aggravated violations of human rights that are regarded as war crimes, as well as establishing diplomatic and consular relations between the two States at the embassy level. In view of the implementation of provisions under the said agreement, the Republic of Croatia has adopted the Law on General Amnesty that came into force on 5 October 1996. To date, the Law on General Amnesty has been applied to a total of 15,029 individuals of which 11,688 have domicile in the Croatian Podunavlje region.

6. The signing of the Dayton Agreement in November 1995, as the basis for establishing Bosnia and Herzegovina as a union of three constitutive nations and the holding of elections in September 1996, has created all the preconditions for the return of refugees from the territory of Bosnia and Herzegovina. This has resulted in the decline of the number of refugees residing in the Republic of Croatia. At present, there are 84,406 registered refugees in the territory of the Republic of Croatia.

7. The aforementioned liberation of most occupied regions has also created conditions for the initiation of the return of refugees to these regions. The Republic of Croatia is currently providing care for 134,303 refugees, some of whom are awaiting reconstruction of their destroyed homes, while for others, their final return is to regions that were until recently under the auspices of the Transitional Administration. By the end of 1997, it is expected that another 32,959 individuals will have returned to their homes.

8. On 6 November 1996, the Republic of Croatia became a member of the Council of Europe and, pursuant to accepted obligations, the State by the end of October 1997 ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and its additional Protocols (1950), the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987), as well as two regional instruments for protection of the rights of minorities - the Framework Convention for the Protection of National Minorities (1994) and the European Charter for Regional and Minority Languages (1992).

9. For more detailed information on the general political structure and the basic postulates of the legal system of the Republic of Croatia, please refer to the basic document of the Republic of Croatia (HRI/CORE/1/Add.32) and the introductory part of the initial report of the Republic of Croatia (CAT/C/116/Add.6, paras. 9-32).

Constitutional and legal framework

10. The Constitution of the Republic of Croatia dated 22 December 1990 endorses the principle of the separation of powers (art. 4). Furthermore, all laws have to be in accordance with the Constitution, whereas all other legal acts and regulations have to be in accordance with the Constitution and the laws of the Republic of Croatia. The Constitution also states the basic principle according to which human rights and freedoms can only be restricted by law with a view to securing the protection of freedom and rights of other people and public order, morality and health (art. 16).

11. Articles 14-70 of the Croatian Constitution regulate fundamental freedoms and human rights and basic principles regarding the rights of national and ethnic communities or minorities. The Constitution of the Republic of Croatia guarantees the following fundamental freedoms and human rights: the right to life (the Constitution has abolished the death penalty); the right not to be subjected to torture or inhuman or degrading treatment; the prohibition of slavery and forced labour; the right to freedom and security of person; the right to privacy, family life, home, marriage and the founding of a family and equal status of both spouses; the equal rights of men and women to enjoy civil, political, social and cultural rights; the right to freedom of thought and expression (censorship is prohibited); the right to peaceful assembly and association, including the right to establish and join trade unions; the right to work and free choice of employment; the right to equal salaries for the same job; the right to legal protection for acts that violate fundamental rights; the right to universal suffrage; the right to peaceful enjoyment of property; the right to inheritance; the right to education and cultural rights. These freedoms and rights can only be restricted by law adopted by the Croatian State Parliament (art. 16) during a state of emergency. The Croatian State Parliament can enforce these restrictions by means of a qualified majority vote by presidential decree (art. 17, paras. 1 and 2). However, the right to life, the prohibition of torture, cruel or degrading treatment or punishment, the principle nullum crimen, nulla poena sine lege previa and the freedom of thought, conscience and religion can never be derogated.

12. Pursuant to article 101, paragraph 1, of the Constitution of the Republic of Croatia, and upon the proposal of the Government of the Republic of Croatia, a number of decrees were adopted as a result of which the following three decrees adopted during the aggression on Croatia, have ceased to have effect:

(a) Decree on the Application of the Law on Criminal Procedure in the Case of a State of War or a Direct Threat to the Republic of Croatia (Official Gazette of the Republic of Croatia, 73/91 and 25/92);

(b) Decree on the Organization, Work and Structure of Judicial Authorities in the Case of a State of War or a Direct Threat to the Independence and Integrity of the Republic of Crc tia (Official Gazette of the Republic of Croatia, 69/91, 25/92 and 81/92);

(c) Decree on the Organization, Work and Territorial Competence of Municipal and District Public Prosecutors' Offices in the Case of a State of War or Direct Threat to the Independence and Integrity of the Republic of Croatia.

International conventions and agreements

13. International conventions and agreements, upon ratification pursuant to the Constitution and publication thereof in the Official Gazette of the Republic of Croatia (article 90 of the Constitution), become an integral part of the domestic legal system of the Republic of Croatia and take precedence over domestic legislation (art. 134).

14. To date, the Republic of Croatia has become party to most international treaties regarding human rights. The Republic of Croatia is a party to the following agreements:

(a) International Covenant on Economic, Social and Cultural Rights, 1966;

(b) International Covenant on Civil and Political Rights, 1966;

(c) Optional Protocol to the International Covenant on Civil and Political Rights, 1966;

(d) Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989;

(e) Convention on the Prevention and Punishment of the Crime of Genocide, 1948;

(f) Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 1968;

(g) Slavery Convention, 1926, amended by the 1953 Protocol on the Slavery Convention;

(h) Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956;

(i) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949;

(j) International Labour Organisation Convention (No. 29) Concerning Forced Labour, 1930;

(k) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984;

(l) International Labour Organisation Convention (No. 102) Concerning Social Security (Minimum standards), 1952;

(m) Convention relating to the Status of Refugees, 1951;

(n) Protocol Relating to the Status of Refugees, 1967;

(o) Convention relating to the Status of Stateless Persons, 1954;

(p) International Labour Organisation Convention (No. 87) Concerning Freedom of Association and Protection of the Right to Organize, 1948;

(q) International Labour Organisation Convention (No. 98) Concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1949;

(r) International Labour Organisation Convention (No. 122) Concerning Employment Policy, 1964;

(s) International Labour Organisation Convention (No. 135) Concerning Protection and Facilities to be afforded to Workers' Representatives in the Undertaking, 1971;

(t) Convention on the Political Rights of Women, 1953;

(u) Convention on the Nationality of Married Women, 1957;

(v) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962;

(w) Convention on the Rights of the Child, 1989;

(x) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Field, 1949;

(y) Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949;

(z) Geneva Convention relative to the Treatment of Prisoners of War, 1949;

(aa) Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949;

(bb) Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977;

(cc) Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977;

(dd) International Convention on the Elimination of All Forms of Racial Discrimination, 1965;

(ee) International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973;

(ff) International Convention against Apartheid in Sports, 1985;

(gg) Convention on the Elimination of All Forms of Discrimination against Women, 1979;

(hh) International Labour Organisation Convention (No. 100) Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951;

(ii) Convention against Discrimination in Education, UNESCO 1960;

(jj) International Labour Organisation Convention (No. 111) Concerning Discrimination in respect of Employment and Occupation, 1958.

Incrimination of torture

15. Although torture and other forms thereof, i.e., assault and grievous bodily harm are not defined as explicit criminal acts, they are prohibited pursuant to the provisions of the Criminal Code as criminal acts against human rights and freedoms (arts. 45-65), crimes against life and physical integrity (arts. 34-44) and criminal acts against personal dignity and morality (arts. 79-87). Among these, the following crimes are of special interest: breaches of equality of citizens (art. 45), unlawful arrest (art. 46), extortion of statements (art. 48), abuse of duty or public authority (art. 49), breach of inviolability of homes (art. 52), illegal search (art. 53), breach of confidentiality of correspondence and other packages (art. 54) and unauthorized wiretapping and sound recording (art. 57). Contrary to current legislation, article 176 of the new Criminal Act of the Republic of Croatia dated 19 September 1997, expressly incorporates the crime of torture and other cruel, inhuman or degrading treatment and is thus in accordance with the definition of torture as formulated by the Convention. The penalty for this crime ranges from one to eight years' prison sentence. The said Criminal Code became effective on 1 January 1998. (While the new Criminal Code entered into force at that date the information given in this report corresponds to the previous Criminal Code since the period covered and the existing statistics relate to it.)

16. Many provisions in legislation on criminal and administrative procedures arise from the Constitution, according to which any arrested or convicted individual has to be treated in a humane manner having regard to the dignity of the said individual (art. 25, para. 1). The Law on the Execution of Sentences Passed for Criminal Offences, Economic Transgressions and Petty Offences (hereinafter referred to as the Law on the Execution of Sentences) stipulates the same treatment.

17. Moreover, article 29, paragraph 3 (3), of the Constitution states that "evidence illegally obtained shall not be admitted in court proceedings". Pursuant to this principle, the Law on Criminal Procedure prohibits the use of force to obtain statements (arts. 9, 208, para. 8, 209, para. 1, 218 and 249, para. 3) and renders a verdict invalid if based on such evidence (art. 354, para. 1 (8)).

Competent bodies

18. Bodies responsible for dealing with breaches of provisions of the Convention against Torture are the courts, public attorneys, police, ombudsmen and other administrative bodies. Courts have a constitutional duty (art. 115, para. 3) to ensure equal implementation of the law for everyone (art. 26). In criminal proceedings, the public attorney not only has a role as a party, but also according to the prevailing doctrine of continental law, the role of an objective State body responsible for "discovering the truth" and ensuring that the law is complied with. His decision to prosecute is based on the so-called principle of obligatory prosecution (article 17 of the Law on Criminal Procedure). The police bodies have the same obligations and are responsible for the protection of public security and law and order (protection of health and life of citizens, their property, identification of criminal acts and offenders thereof, obtaining the evidence in view of criminal procedure, etc.).

Courts and sanctions

19. Pursuant to the Law on Courts, authority regarding violations of provisions under the Convention lies with courts of general jurisdiction and specialized courts. Courts of general jurisdiction are: municipal courts settling criminal acts that carry a prison sentence not exceeding 10 years; county courts settling criminal acts that carry a prison sentence exceeding 10 years; and the High Court of the Republic of Croatia that covers no specific jurisdiction but settles appeals and special legal remedies. Specialized courts are commercial courts and the Administrative Court of the Republic of Croatia.

20. In the last two years, the total number of individuals sentenced to prison in the Republic of Croatia has not drastically changed. Thus, there are approximately 75 convicts per 10,000 adult citizens.

21. The execution of penal sanctions against adult offenders and minors in the Republic of Croatia is regulated by the Law on the Execution of Sentences Passed for Criminal Offences, Economic Transgressions and Petty Offences. These sanctions are imposed in 6 major penal institutions, 14 county penitentiaries and 2 specialized institutions for the re-education of juveniles.

22. The penal institutions in the Republic of Croatia can accept approximately 2,300 individuals namely, 42 per cent in "closed" institutions, 48 per cent in "open" or "semi-closed" institutions and 10 per cent in the central prison hospital. As at 31 December 1996, there were 2,156 detained individuals of whom: 1,387 were in penal institutions and county penitentiaries, 730 were detainees and 39 individuals were charged with misdemeanours. During the course of 1996, there were 8,143 prisoners in the above-mentioned institutions, of which: 2,572 were convicts, 3,105 were detainees and 2,466 individuals charged with misdemeanours.

Legal remedies

23. The basic legal remedies available to persons who have been victims of torture or some other cruel, inhuman or degrading treatment or punishment, are the following: (a) the right to notify competent bodies for monitoring the regularity of procedures for the above-mentioned cases (the Ministry of the Interior for actions during the course of a police inquiry, prison administrators and the Department of Justice for cases occurring during the serving of a prison sentence); (b) the right of appeal directly to the public attorney's office within three days from the occurrence of illegal or irregular police actions in the course of an inquiry; (c) the right to bring criminal charges on the basis of certain criminal acts to the public attorney, and the right of a victim to institute criminal proceedings against the offender independently as a private plaintiff; and (d) the right to compensation. Furthermore, the Administrative Court of the Republic of Croatia provides legal protection against illegal or indecent acts committed by other administrative bodies.

Current situation and problems

24. With the progressive harmonization of police procedures with standards maintained in democratic societies, many important measures have been introduced, from the reform of criminal legislation, to the amendment of the Law on Internal Affairs and the introduction of other regulations within the framework of the Ministry of the Interior. These new measures are completely in accordance with European norms and thus with worldwide accepted basic principles, as standards for the coordinated functioning between a legal State and guaranteed human rights.

25. In view of the above, it should be pointed out regarding police practice that, for the first time in this part of the world, new special mechanisms for protecting fundamental human rights, especially the right to life, personal freedom and integrity, the prohibition of inhuman treatment, illegal detention and the integrity of home, have been formulated in accordance with constitutional principles and normative changes. Apart from reform of criminal legislation, reform of police legislation which regulates their performance, organization and procedures, has strengthened the protection of human dignity and integrity of human rights and freedoms against repressive police measures.

26. Even the position of the Ministry of the Interior itself, as the executive authority, is structured pursuant to the Law on Organization and Jurisdiction of Ministries and Other Bodies of Public Administration, the Law on Organization and Jurisdiction of State Bodies and the Law on the State Administration System.

27. The general state of security in the liberated regions corresponds to that in other parts of the Republic of Croatia. This is manifested by the apparent decline in the number of crimes registered since 1996. Moreover, this is further proved by the fact that recently in these regions there have been only occasional cases of aggravated crimes, which the police have successfully solved. Regarding unsolved cases, the police are undertaking intensive operations with the aim of identifying offenders thereof, which will no doubt contribute to further stabilization of the general security of people and property in these regions. In view of this, the Ministry of the Interior is consistently making efforts to take measures within its framework, in order to ensure improved security in the liberated regions, which would facilitate better economic development and the return of refugees.

28. Furthermore, the Government of the Republic of Croatia has also fulfilled all preconditions for the constitutional and legal functioning of the Croatian State in the region of Croatian Podunavlje where the process of peaceful reintegration is currently taking place.

29. In spite of a wide range of security measures taken in the liberated regions, a certain number of cases regarding the violation of human rights, i.e. criminal behaviour (murder, robbery, burning and looting of abandoned properties) have been registered. A certain number of these criminal acts, committed by individuals or smaller groups outside the control of the Croatian authorities, could not have reasonably been prevented. However, all competent bodies have been taking legal measures in all identified and registered cases with a view to solving those crimes still unsolved.

30. With regard to murder cases, which were mostly committed immediately following the liberation of previously occupied regions, namely during the period from 4 August 1995 to 31 December 1996, the Ministry registered 41 murder cases in which 67 persons were killed (53 Serbs, 12 Croats and 2 Muslims). Of the total number of murder cases, 21 cases in which 41 persons were killed have been solved. The police have brought charges before competent legislative authorities against 33 individuals involved in aggravated crimes. Regarding the remaining murder cases, the police are currently collecting material evidence within the framework of intensive operations to arrest the offenders in question.

31. During the same period, the police registered 68 robberies in this region, of which 40 have been solved; 81 offenders in relation to these crimes have been arrested.

32. Police officials in the liberated region have also processed 3,357 cases of aggravated theft, of which 2,158 have been solved and 3,144 offenders have been arrested.

33. In the liberated region, the police have also registered 983 cases of partial or complete destruction of houses where investigations have been conducted at the scene of the crime. Investigations into these cases have demonstrated that the destruction of such abandoned properties was intentional. The police have solved 53 of these cases and arrested 50 offenders.

II. INFORMATION ON MATERIAL PROVISIONS OF THE CONVENTION

Article 2

34. The Croatian legal system and regulations concerning the police and penal system regulate conditions for the prevention and sanctioning of all acts included in the terminology of torture and other cruel, inhuman and degrading punishment and treatment. The prohibition of these acts, excluding the constitutional norm (art. 23), is prescribed by various provisions of the Criminal Code, the Law on Criminal Procedure and other laws and by-laws that regulate disciplinary obligations of police officials, as well as by regulations on the execution of penal sentences. Furthermore, the prohibition of torture is contained in the Constitutional Law on Human Rights and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia.

35. As already mentioned, the constitutional prohibition of torture in the Republic of Croatia cannot be derogated, even in exceptional circumstances (article 17, paragraph 3, of the Constitution), whereas the Law on Criminal Procedure prohibits all forms of cruel methods for obtaining statements from persons during criminal proceedings. Furthermore, the Law on Internal Affairs and its by-laws regulate all measures of control over the police as well as disciplinary proceedings and sanctions.

36. As already emphasized in the initial report, the Constitution of the Republic of Croatia represents the basis for the legal as well as institutional values in respect of coordinating the general Croatian legal

system with European legislation, notably with laws and norms of a modern European society. Personal freedoms and human and civil rights as the highest values of the constitutional and legal system can only legally be limited pursuant to article 16 of the Constitution of the Republic of Croatia for the purpose of protecting human freedoms and rights, constitutional order, public morals and health. In delivering judgements and decisions, courts and other competent bodies can seek guidance from the Ministry of the Interior, which has the obligation to provide guidance if there exists physical resistance against the execution of a decision or if such resistance can reasonably be expected, as stipulated in article 46, paragraph 1, of the Law on Internal Affairs.

37. Pursuant to constitutional postulates, Ministry of the Interior officials are under a duty to comply with the provisions of the Law on Criminal Procedure and the Law on Internal Affairs in the course of performing their daily duties. The said Ministry has to monitor on a daily basis whether police behaviour is legal, professional, tactical, decent and correct towards citizens with due regard towards efficient protection of human rights.

38. Owing to the introduction of the new system of principles and by taking numerous correct and institutional measures, during the last year there was an increase in the legality of procedures when compared with the situation of two years ago. Thus, in 1996, disciplinary procedures were instituted against 3,673 officials, of which 2,394 related to the abuse of work discipline and 1,279 for the aggravated abuse thereof.

39. The majority of aggravated abuse cases are related to negligent performance of duties (409), indecent behaviour on and off duty (374), the abuse of authority (149), and failure to execute prescribed measures (144).

40. In the course of the proceedings, 240 officials have been removed from duty due to aggravated offences, and 110 officials have been dismissed from service pursuant to decisions by disciplinary courts, whereas 971 have been fined. Criminal procedures have been instituted against 186 officials on the grounds of serious aggravated offences.

41. From the overall number of disciplinary proceedings, disciplinary procedures for citizen abuse were instituted against 10 police officials in 1995 and against 6 in 1996. These cases involving the use of violence were committed mostly by younger police officials who were either insufficiently educated or inexperienced. These offences usually consisted of inflicting bodily harm in the course of police inquiries aimed at obtaining confessions for offences or collecting evidence.

42. The legality of police behaviour is one of the major preconditions for the functioning of a legal State. Thus, the Ministry of the Interior has given priority to providing education, thereby limiting repressive measures at all levels of police work. Pursuant to this view, in reforming the Law on Internal Affairs, the Ministry of the Interior has established certain protective democratic mechanisms according to which all government officials and the officials of ministries are to protect the lives of people and the dignity of man and are only to utilize those enforcement measures as prescribed by law. These enable the performance of duties with the fewest

possible repercussions. This excludes, however, every single type of abuse by individuals acting on their own. This law guarantees human dignity, integrity and human rights and sets down limits for police authorities.

43. Moreover, the procedure which must be obeyed in case of an appeal against police behaviour is explained in great detail. According to this procedure, if charges by civilians are based on any form of abuse or some other illegal treatment, the Ministry of the Interior has to notify the applicant within 30 days of measures being taken regarding the charges. This represents an additional protection against the prevention or concealment of any kind of violation of fundamental human rights in police proceedings, especially in case of any form of violence, as prescribed by the Convention.

44. Pursuant to the consistent application of the necessity principle as prescribed by the European Convention on Human Rights, the Croatian police force, prohibits the use of unjustified force except when it is absolutely necessary to achieve the legal effect in the performance of their duties. Strict application of this principle in practice prevents any abuse by the police authorities.

45. To fulfil this same principle, the Law on Internal Affairs has reduced the length of detention for citizens in police facilities from three days to one.

46. Furthermore, pursuant to a process initiated to introduce changes into criminal legislation with a view to ensuring effective protection from police intrusion into fundamental human rights and freedoms, the police no longer have the authority to determine the issue of detention, which has now been placed under the jurisdiction of the courts. This provides an additional guarantee of this measure, which is of a legal nature.

47. Hence, the transformation of the overall legal system, especially the regulations within the competence of the Ministry of the Interior, has enabled a higher level of protection of human dignity and integrity of human rights. Accordingly, numerous criminal acts have been identified with a view to protecting the freedoms and rights of man and citizen. This includes introducing a higher level of responsibility if the offence is committed by an official person, especially the crime of abuse of service and authority. Only eight cases of this type were recorded in 1996 or 0.01 per cent of the total number of criminal acts in the said year, and two criminal acts of extortion of statement.

48. After a considerable decline of 41.3 per cent in 1995, during the course of 1996 there was an increase of 9.6 per cent of crimes involving coercion, which is still below the level of previous years. Accordingly, in 1995, there were 493 cases involving forms of coercion whereas in 1994 there were 767 such cases.

49. Of the total number, 471 cases involving forms of coercion were evaluated as justifiable, whereas the remaining 22 were not (in 1995 also 22 were not determined as justifiable). Taking into account the use of moderate means of coercion, physical force was most frequently used (399 cases), followed by the use of a truncheon (30), the use of firearms (9), and finally other means of coercion (55).

50. The major forms of coercion took place in open locations (329) whereas 164 cases took place within some facility. Coercion, when it occurred, was generally used in response to a direct assault on a person (169 cases), for suppressing resistance (123) and for taking individuals into custody (90). Furthermore, means of coercion were used 19 times for the purpose of preventing the escape by offenders caught red-handed, 12 times for the purpose of protecting the lives of others, twice in response to assaults on persons or attacks on a guarded facility, 5 times for the holding of individuals, 6 times for preventing escape by detainees and 67 times for other reasons.

51. In 1996, the use of coercion resulted in three individuals being killed, 168 slightly injured and 9 seriously injured. At the same time, 192 police officers were slightly injured and 11 seriously.

52. In 1996, due to the inappropriate use or abuse of powers, 28 disciplinary procedures were instituted against police officers.

53. Unlike the police, who use firearms as a means of very restricted coercion (in only 1.8 per cent of cases), this seems to be the most frequent behaviour of assailants (in 12.4 per cent of cases) towards the police. This clearly shows consistent implementation of the principle and, most of all, the use of moderate forms of coercion even in cases of the most serious forms of assault upon police officers.

54. In defending themselves from physical assaults, police officers used coercion in 211 cases on 277 individuals, utilizing physical force (155 cases), a truncheon (11 cases), firearms (8 cases) and other means (37 cases).

55. These assaults did not result in fatality among policemen. However, 209 policemen were slightly injured and 15 seriously. At the same time, 2 assailants were killed, 80 were slightly injured and 8 seriously.

56. Since the police for the first time take into account the legality of action and the exercise of authority at all levels of their work, pursuant to experiences of European police forces, the new police structure includes an Office for Internal Control aimed at preventing illegal behaviour in the line of police duty.

57. Furthermore, adequate and effective response to individual cases of illegal behaviour, especially to complaints and petitions by civilians, has contributed to strengthening the legitimacy and social acceptability of the police. In 1996, the Office for Internal Control received 468 cases under its jurisdiction (in 1995, there were 353 such cases), mostly complaints (22), petitions (318) and operative information (72). By the end of the year, the Office had solved 458 of these cases. The remaining cases will be processed in due course.

58. The majority of these 458 cases relate to abuse of duty or of authority (232 or 50.7 per cent), failing to take or insufficiently taking prescribed measures (102 or 22.3 per cent) and the negligent performance of duties (33 or 76.2 per cent) and indecent behaviour on and off duty (40 or 8.7 per cent).

59. Moreover, it is important to mention that out of these cases, 88 or 19.2 per cent relate to the behaviour of chief police officials, 267 or 58.35 per cent to police officials and 54 or 11.8 per cent to officials from the crime squad.

60. Of the 458 cases, 70 or 15.3 per cent have been vindicated, whereas 47 or 10.3 per cent only partially justified.

61. The investigation into a certain number of complaints and pieces of operative information has resulted in disciplinary action against police officials in 113 cases. In one case charges for misdemeanour have been recommended, in 26 cases criminal indictments and in 9 cases personnel charges.

62. Furthermore, in 1996 the police administration received 1,734 petitions and complaints of which 1,689 were solved by the end of the year. The remaining 48 will be solved in due course. Of the overall number of cases processed by the police administration, 174 cases were vindicated.

63. Pursuant to article 16 of the Law on Internal Affairs, as already mentioned in the first report, the Croatian Parliamentary Board for Internal Politics and State Security, constituted from the Chamber of Deputies, monitors the legality of the Security Service's performance. The board monitors the work of the Security Service especially regarding the exercise of human and civil rights and freedoms, the rights prescribed by the Constitution and legislation as well as rights and freedoms endorsed by international law. At least once a year, the board submits a report to the Croatian State Parliament addressing the legality of work of the Security Service.

64. Pursuant to article 158 of the Law on Execution of Sentences, a convicted person has the right to appeal to the prison administrator against any breach of his/her rights or any other illegal measures taken during the procedure. The administrator is under a duty to consider every appeal, reach a decision on the appeal in the form of a ruling and notify the convicted person of such. If a convicted individual appeals to the Department of Justice against the administrator, the administrator must forward them the appeal together with the relevant documents. The legal service in prisons has to notify a convicted person of the right of appeal, the grounds on which the individual can appeal and of the obligation to comply with proceedings following the appeal. During the course of 1996, the Department of Justice received nine appeals from prisoners regarding treatment and behaviour by members of the Justice police.

65. Pursuant to legal provisions, members of the Justice police may only use means of coercion in cases of preventing an escape by a convicted person, a physical assault on members of personnel, inflicting bodily harm to other individuals, self-injury or inflicting material damage. The use of firearms is only permitted if the use of physical force, a truncheon or other means of coercion, cannot guarantee their legal performance of duties, or cannot protect the lives of people and prevent the convicted person from directly endangering the lives of Justice police officers, or cases involving attacks on property or preventing escape. The Department of Justice has to be notified about every use of firearms against convicted persons. Last year,

the Department of Justice recorded 40 cases of coercion on prisoners, of which 23 implied the use of physical force and 17 the use of a rubber truncheon. Out of the total number of the cases where coercion was used, only a single case occurred where it was perceived that authority had been abused by the use of a rubber truncheon. Subsequently, three Justice police officers were punished under disciplinary proceedings.

Article 3

66. As emphasized in the previous report, the Law on Movement and Residence of Aliens grants refugee status to foreign nationals who have left a State in which they were citizens or had permanent residence as stateless persons in order to avoid prosecution due to their political views or due to their national, racial or religious beliefs. The request for refugee status is submitted upon entry into the Republic of Croatia, and a foreign national is taken into the foreigners' accommodation centre for the time it takes for the procedure to be completed, if that individual has no means of subsistence or funds to personally pay for private accommodation.

67. The request for acceptance of refugee status contains the name and surname, date and place of birth, citizenship, occupation and address in the country the individual has left, circumstances that have brought him/her to the Republic of Croatia, information on immediate family members, reasons for requesting acceptance of refugee status and additional information if the said individual has already requested protection from some other country. The request for acceptance of refugee status may be denied if there is reason to believe that individual has committed terrorist acts, aggravated crimes, acted against the principles of the United Nations or if the same is sought on grounds of national security or public law and order. If a foreigner has already received refugee status, it may be revoked for the same reasons.

68. A child of a foreign citizen who has received refugee status enjoys the same rights as its parent. After reaching 18 years of age, he or she will be regarded as a foreign national enjoying extended residence.

69. The Ministry of Interior, in coordination with the Ministry of Labour and Social Welfare, determines the issue of acceptance of refugee status.

70. A foreign national whose refugee status has been accepted will be provided with the necessary accommodation, means of support and medical care for a period not exceeding three months, starting from the date of acceptance of refugee status and ending with his/her departure to another country, or until that individual can provide means of support on his/her own.

71. Refugee status will be revoked if a foreign national requests the protection of a State of which he/she is a citizen or of a State where he/she possesses domicile as a stateless person, if the reasons why that individual fled the country in question cease to exist or if he/she voluntarily returns to that country. Refugee status can also be terminated if a foreign national receives a citizenship of some other State. Furthermore, refugee status ceases to exist if a person has been sanctioned with the protective measure of expulsion or dismissal from residence or cancellation of refugee status (if it is necessary for the reason of protecting national security or public law and order).

72. In 1996, there was not a single case of accepting refugee status for foreigners.

73. With regard to the rights of foreigners, it is important to mention that the Constitution of the Republic of Croatia incorporates in article 32, paragraph 1, the principle of article 12, paragraph 1 of the International Covenant on Civil and Political Rights: "Anyone who legally finds himself on the territory of the Republic shall have the right to move freely and choose a residence." In its article 32, paragraph 1, it incorporates article 12, paragraph 3 of the said Covenant: "The right of movement within the Republic of Croatia and the right to enter or leave it may exceptionally be restricted by law, if this is necessary to protect the legal order or the health, rights and freedoms of others." Furthermore, by its general provisions the Law on Movement and Residence of Aliens legislates the said provisions of the Covenant. The conditions for entry and residence of foreigners in the Republic of Croatia are regulated by article 2 of the law: "A foreigner has the right to enter in and reside on the territory of the Republic of Croatia with valid travel documents issued in accordance with regulations of a foreign country or valid travel documents for foreigners that contain a visa issued by a national body authorized for issuing the mentioned documents, unless it is hereunder prescribed otherwise." Article 3 of the law regulates restrictions on the ground of protecting national security or public law and order: "A foreigner may be denied the right to enter into the Republic of Croatia, his/her freedom of movement may be limited or denied in a certain area, his/her residence may be cancelled or permanent residence may be denied in certain areas for the purpose of protecting national security or, for the reasons of protecting public order."

74. A foreigner has to notify competent authorities as to his/her place of residence and any changes of address and has to register or cancel his/her residence. Failure to comply with the said provision will be regarded as an offence prescribed by criminal provisions of the Law on Movement and Residence of Aliens which can result in application of article 39 of the said law, i.e. in revoking residence or sanctioning through the protective measure of removal from the territory of the Republic of Croatia under legal proceedings.

75. Pursuant to the law, a foreigner who is sentenced by a security measure of expulsion or protective measure of removal or if his/her residence is cancelled or if his/her residence has not been authorized by competent authorities, has to leave the territory of the Republic of Croatia within the period designated by the competent body (article 65, paragraph 1, of the Law on Movement and Residence of Aliens). The security measure of expulsion of foreigners from the country is determined by criminal courts if the offender has been sanctioned with a regular sentence or a suspended sentence. The security measure of expulsion lasts from 1 to 10 years or is indefinite.

76. Article 65, paragraphs 2 and 3, of the Law on Movement and Residence of Aliens prescribes the use and mechanisms for enforced removal of foreigners from the Republic of Croatia. A foreigner who does not leave the territory of the Republic of Croatia within the designated period and possesses valid travel documents will be escorted to the national border and removed from the Republic of Croatia by force.

77. A foreigner who does not possess valid travel documents will be escorted to the diplomatic or consular mission of the State of which he/she is a citizen for the purpose of receiving travel documents. If the mission refuses to issue requisite travel documents, the foreigner will receive a travel certificate and will be escorted to the national border and delivered to the competent authorities of a neighbouring country of which he/she is a citizen or of any other country that is willing to accept him. The costs of such will be met by the foreigner himself/herself. If the foreigner in question has no financial means, the costs will be settled out of the national budget of the Republic of Croatia.

78. On the territory of the Republic of Croatia, 2,522,969 foreigners registered their residence in 1996 and 1,178,317 in 1995. Among those registered, the majority were Italians (430,654, or 92.7 per cent more than in 1995), Germans (427,094, or 127.5 per cent more), Slovenians (420,001, or 60.0 per cent more) and Austrians (353,391, or 98.0 per cent more).

79. In 1996, 1,397 criminal charges (986 in 1995) and 8,528 misdemeanour charges (6,142 in 1995) were filed for criminal acts committed against foreigners. Measures to cancel residence were implemented against 1,052 (798 in 1995), security measures of expulsion against 82 (77 in 1995) and protective measures of removal against 980 (789 in 1995) foreign nationals. Two hundred and fifty-three (253) foreigners (189 in 1995) were retained and 3,281 (2,704 in 1995) were subject to fines.

80. In 1996, 1,170 foreign nationals were removed from the Republic of Croatia by force. These were nationals of the following countries: 87 from the Federal Republic of Yugoslavia, 282 from Bosnia and Herzegovina, 16 from Slovenia, 23 from Macedonia, 26 from Albania, 4 from the Czech Republic, 13 from Italy, 3 from Hungary, 9 from Germany, 4 from Poland, 484 from Romania, 2 from Slovakia, 128 from Turkey, 48 from the former Soviet Union, 8 from Egypt, 3 from Morocco, 2 from China, 5 from Sri Lanka and 1 each from Finland, France, Greece, Norway, the Netherlands, Iraq, Iran, Peru, Tanzania and Senegal.

81. In the course of 1996, accommodation centres accepted 734 foreign nationals (462 in 1995) pursuant to international standards.

82. Due to the failure to use measures of removal or find appropriate accommodation, in 1996 residence was regulated for 63 foreign nationals (77 in 1995) pursuant to international instruments concerning family reunion issues.

83. A considerable increase in criminal and misdemeanour charges brought against foreigners was noted. The use of measures to forcibly remove foreigners due to violations of regulations, identified when controlling the legal grounds for their residence and movement in the Republic of Croatia, is the result of the fact that the Republic of Croatia is increasingly facing the problem of illegal migration. This is especially from countries with a high migration risk, and is also apparent from the significant increase in illegal residences identified this year.

84. With a view to offering better treatment and accommodation to foreigners who are currently participating in legal proceedings, a modern accommodation centre has been opened in Jezevo, near Zagreb.

85. In 1995 and 1996, the Republic of Croatia did not extradite a single foreigner to a State where that foreigner may have been exposed to torture or other similar treatment.

Article 4

86. The Criminal Code of the Republic of Croatia prescribes norms for various crimes. They prohibit torture and other inhuman or degrading treatment such as: violation of equality of citizens (art. 45); unlawful arrest (art. 46); extortion of statement (art. 48); abuse of duties or public authority (art. 49); breaching the inviolability of the home (art. 52); illegal search (art. 53); violation of confidentiality of correspondence and other post (art. 54); and unauthorized wiretapping and sound recording (art. 57).

87. In order to prevent these criminal acts, during the course of 1996, the police filed two criminal charges on the grounds of violation of equality of citizens, whereas the previous year no such charges were registered. For unlawful arrest, the police in 1996 filed 22 criminal charges (9 in 1995) and for extortion of statement, 2 criminal charges (only 1 in 1995). On the ground of abuse of duty or authority, in 1996, the police filed 8 criminal charges (8 in 1995); 1 charge of coercion in 1996, (none in 1995); 3 charges for breach of inviolability of the home in 1996, (4 in 1995); in 1996 there were no charges on the ground of illegal search (none either in 1995); 4 charges for violation of confidentiality of correspondence and other post in 1996 (32 charges in 1995); and no charges for unauthorized wiretapping and sound recording in 1996 (1 in 1995).

88. Regarding crimes against human and civil freedoms and rights (chapter VI of the Criminal Code of the Republic of Croatia), during the period from 1 January 1996 to 12 June 1997, the Department of Justice registered 90 defendants of whom 23 were convicted for the crime of unlawful arrest (11 defendants and 2 convicted); kidnapping (4 defendants and 3 convicted); crimes involving abuse of duty or authority (29 defendants and 3 convicted), and for the criminal act of jeopardizing security (46 defendants and 16 convicted).

Article 5

89. In accordance with the principle of territorial integrity of the State and pursuant to article 99 of the Basic Criminal Code of the Republic of Croatia, every person who has committed any criminal act on the territory of the Republic of Croatia is subject to the Croatian Criminal Code.

90. As previously mentioned in the initial report, every person who has committed a crime on board any Croatian vessel (the vessel having been registered in the Republic of Croatia) is also subject to the Croatian Criminal Code, regardless of the location of that vessel at the time the crime was committed. The Croatian Criminal Code also applies to criminal acts

committed in domestic civil aircraft during the course of a flight or in military aircraft, regardless of the aircraft's location at the time the crime is committed.

91. Pursuant to article 101 of the Basic Criminal Act of the Republic of Croatia, provisions of the Croatian Criminal Code apply to all nationals of the Republic of Croatia for acts committed in any foreign country, if at the time, the person in question is situated on the territory of the Republic of Croatia or has been extradited.

92. Pursuant to the provisions of article 102 of the Basic Criminal Act, the Code also applies to foreign nationals who have committed crimes against the Republic of Croatia or against any Croatian national outside Croatian territory, if that person is situated on the territory of the Republic of Croatia or has been extradited.

93. The Republic of Croatia has adopted the principle of universal applicability of the Criminal Code. Thus, pursuant to this principle, the Croatian Criminal Code applies to foreign nationals who have committed a criminal act against any other State or any national thereof outside the territory of the Republic of Croatia. In these cases, Croatian penal legislation applies to the foreigner who has committed a criminal act in a foreign country for which that person, pursuant to Croatian legislation, can be sentenced to a five-year term or more if he/she is situated on the territory of the Republic of Croatia and is not to be extradited to the respective foreign country.

Article 6

94. As stated in the initial report, pursuant to provisions of the Law on Criminal Procedure, if there is reason to suspect that a person has committed a crime, that person can be detained (preliminary detention) in accordance with strictly prescribed conditions. This measure can be applied only upon an order issued by the investigating judge to whom the arrested individual has been surrendered, after the investigating judge has questioned the individual. Detention has to be revoked automatically without the request of the defendant, if the reasons which led to the detention cease to exist. Detention must be replaced by a more moderate measure (for example, an undertaking by the defendant that he/she will not leave his/her place of residence; a guarantee, etc.) when appropriate legal conditions are met. Upon the request of the detainee, authorities have to notify relatives about the detention or any other person that the detainee specifies. Pending preliminary proceedings, the defendant can only be detained for a period not exceeding one month from the date of his/her detention. Upon expiry of this period, the county court council can only prolong detention for a further period not exceeding two months, and in the case of aggravated offences subject to a prison sentence exceeding five years, the Supreme Court Council can further prolong detention by a period not exceeding three months. Upon termination of this period, the defendant has to be released from detention regardless of the fact whether the inquiry has been completed. In any case an individual subjected to illegal detention has the right to indemnity.

95. Regarding the extradition of defendants and convicts, the Law on Criminal Procedure states that, after a request for extradition of a foreign national has been submitted to the investigating judge, if there are grounds for detention, the investigating judge has to issue a detention order, unless the request makes it clear that extradition is not justified. After confirming the foreign national's identity, the investigating judge has to notify him/her immediately of the crime with which that person has been charged, as well as of the evidence that has led to his/her extradition and inform him/her of the right to legal counsel. The defendant will be provided with a lawyer if the crime in question demands the presence of such.

96. In case of an emergency, when there is a possibility that the foreign individual could escape, the police have authority, upon request by foreign bodies, to arrest the individual in order to surrender him/her to the investigating judge. This request must contain all the necessary information and a statement that extradition will be sought by regular means.

97. If detention has been mandated, the investigating judge has to notify the Ministry of Foreign Affairs through the Department of Justice. If the reasons that have led to detention cease to exist or if the foreign bodies have not submitted a request for extradition within the specified period designated by the judge, the foreign national must be released. This period should not exceed three months from the date of detention, and upon the request by a foreign country, the county court council can prolong the period for a further three months if justified by reasonable grounds.

98. In the course of 1996, 13 foreign nationals were extradited due to various criminal acts (in 1995, only 3). None of these cases were related to extradition on the grounds of abuse or torture as stipulated in the Convention.

Article 7

99. The principle of aut dedere, aut judicare, stipulated in article 7 of the Convention, is also incorporated in the Croatian legal system. As in all major West European countries, the courts oversee extradition proceedings and implementation of extradition agreements. However, since extradition is regarded to be a governmental act, the Republic of Croatia has adopted the system of the so-called "legislative veto": if a county court ruling denying extradition becomes final, it has to be submitted to the foreign country in question and in turn the case is closed. When the court decides that all constitutional and conventional prerequisites for extradition of a foreign citizen have been met, this ruling has to be submitted to the Department of Justice, which reaches the final ruling on the acceptability of the extradition in question.

100. If the evidence shows that the crime has been committed in a foreign country and the extradition has not been approved, a public attorney will, bring criminal charges against the foreigner. This request has to be submitted to the competent county court. In this manner, the Croatian legal system guarantees that a person, whose extradition has been denied, will be prosecuted and put on trial as any other person in accordance with the principles of the pending Criminal Code.

Article 8

101. Regarding the issue of extradition, there are 14 bilateral treaties currently in effect in the Republic of Croatia (signed with Austria, Belgium, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Germany, Greece, Hungary, Italy, Macedonia, Poland, Slovakia, and Turkey). Pursuant to these bilateral treaties, extradition is possible in the majority of the cases (Austria, Belgium, Bulgaria, the Czech Republic, Germany, Greece, Italy, Poland and Slovakia) on the basis of criminal acts stipulated in article 4, with the exception of coercion. Concerning the treaty with Turkey, extradition is only possible on the grounds of the crime of illegal arrest or extortion of statement. The treaty signed with Hungary does not approve extradition regarding criminal acts under article 4.

102. It is important to mention that apart from extortion, on the basis of these treaties legislation of the Republic of Croatia enables the so-called unarranged extradition, based on the reciprocity principle and the exclusive application of the national legislation of the country that demands extradition. Furthermore, the Republic of Croatia has adopted the Constitutional Law on Cooperation with the International Tribunal for the War Crimes Committed on the Territory of the former Yugoslavia dated 1991.

103. The list of bilateral treaties currently in effect in the Republic of Croatia are:

(a) the Treaty on Extradition of Offenders between the Kingdom of Serbs, Croats and Slovenians and Italy of 6 April 1922;

(b) the Treaty on Mutual Legal Support between the Socialist Federal Republic of Yugoslavia and the People's Republic of Bulgaria of 23 March 1956;

(c) the Treaty on Mutual Legal Relations between the Socialist Federal Republic of Yugoslavia and the Kingdom of Greece of 18 June 1959;

(d) the Treaty on Mutual Legal Support between the Socialist Federal Republic of Yugoslavia and the People's Republic of Hungary of 7 May 1960;

(e) the Treaty on Regulation of Legal Relations on Civil, Family and Criminal Issues between the Socialist Federal Republic of Yugoslavia and the Republic of Czechoslovakia of 20 January 1964;

(f) the Treaty on Mutual Legal Relations between the Socialist Federal Republic of Yugoslavia and the People's Republic of Hungary of 7 March 1968;

(g) the Treaty on Extradition of Persons between the Socialist Federal Republic of Yugoslavia and the Federal Republic of Germany of 26 November 1970;

(h) the Treaty on Extradition and Legal Support in Criminal Issues between the Socialist Federal Republic of Yugoslavia and the Kingdom of Belgium of 4 June 1971;

(i) the Treaty on Extradition of Persons between the Socialist Federal Republic of Yugoslavia and Turkey of 17 November 1973;

(j) the Treaty on Legal Support in Criminal Issues between the Socialist Federal Republic of Yugoslavia and the Republic of Austria of 1 February 1982;

(k) the Treaty on Extradition between the Socialist Federal Republic of Yugoslavia and the Republic of Austria of 1 February 1982;

(l) the Treaty on Legal Support on Civil and Criminal Issues between the Socialist Federal Republic of Yugoslavia and the Republic of Macedonia of 2 September 1994;

(m) the Treaty on Legal Support on Civil and Criminal Issues between the Republic of Croatia and the Republic of Slovenia of 7 February 1994; and

(n) the Agreement on Legal Support on Civil and Criminal Issues between the Republic of Croatia and the Government of the Federation of Bosnia and Herzegovina of 26 February 1996.

Article 9

104. Legal support and cooperation in criminal procedures regarding criminal acts prescribed by the Convention is established by virtue of bilateral treaties currently effective in the Republic of Croatia and domestic regulations contained in the Law on Criminal Procedure. This enables cooperation outside the scope of these treaties.

105. All these treaties, together with Croatian domestic legislation, enable foreign countries to use various forms of support in criminal procedures, including: verification of identity papers; the hearing of defendants, witnesses and experts; seizure of articles and their delivery to foreign countries; serving subpoenas; submission of information from police files regarding the defendants, etc. The courts may approve legal support upon the request of other courts and bodies of any foreign country if there is no specific restriction thereof (military or political criminal acts) or if this would jeopardize the security and other important interests of the Republic of Croatia.

106. The list of bilateral treaties for legal support on criminal issues that are currently in force in the Republic of Croatia are as follows:

(a) the Convention on Legal and Judicial Protection of Nationals/Appendix 41 of the Treaty between the Kingdom of Serbs, Croats and Slovenians and Italy of 6 April 1922;

(b) the Treaty on Extradition of Offenders between the Kingdom of Serbs, Croats and Slovenians and Italy of 6 April 1922;

(c) the Treaty on Legal Support between Yugoslavia and Poland 6 February 1960;

(d) the Treaty on Regulation of Legal Relations on Civil, Family and Criminal Issues between the Socialist Federal Republic of Yugoslavia and the Republic of Czechoslovakia of 20 January 1964;

(e) the Treaty on Extradition and Legal Support in Criminal Issues between the Socialist Federal Republic of Yugoslavia and the Kingdom of Belgium of 4 June 1971;

(f) the Treaty on Legal Support between the Socialist Federal Republic of Yugoslavia and the Federal Republic of Germany of 1 October 1971;

(g) the Treaty on Legal and Judicial Support between the Socialist Federal Republic of Yugoslavia and the Republic of Turkey of 8 October 1973;

(h) the Treaty on Legal Support in Criminal Issues between the Socialist Federal Republic of Yugoslavia and the Republic of Austria of 1 February 1982;

(i) the Treaty on Mutual Surrendering of Defendants for Serving Prison Sentences between the Socialist Federal Republic of Yugoslavia and Czechoslovakia of 23 May 1989;

(j) the Treaty on Legal Support on Civil and Criminal Issues between the Republic of Croatia and the Republic of Slovenia of 7 February 1994;

(k) the Treaty on the Uniform Implementation of Legal Decisions in Criminal Issues between the Republic of Croatia and the Republic of Slovenia of 7 February 1994;

(l) the Treaty on Legal Support on Civil and Criminal Issues between the Federal Republic of Yugoslavia and the Republic of Macedonia of 2 September 1994;

(m) the Treaty on the Uniform Implementation of Legal Decisions in Criminal Issues between the Republic of Croatia and the Republic of Macedonia of 2 September 1994;

(n) the Agreement on Legal Support on Civil and Criminal Issues between the Republic of Croatia and the Government of the Federation of Bosnia and Herzegovina of 26 February 1996.

Article 10

107. Informing and training police officials on the prohibition of torture and other forms of cruel, inhuman and degrading treatment of individuals undergoing informative conversations or during questioning or imprisonment is implemented on a regular basis at all levels of education, as a part of the academy and university programme at all three organized educational levels at the police academy. It is the belief that this is the correct way by which to focus on, encourage and develop a civilized, sophisticated and humane relationship between future police officers and citizens.

108. The content of the Convention is incorporated into several courses at several educational levels. Accordingly, it is studied as a part of the curriculum in the following courses: police procedures, criminal inquiries, courses relating to the Law on Criminal Procedure and the Law on Internal Affairs, criminology courses as well as in the Police Code and the curriculum of legal courses.

109. Students being trained as members of the Justice police also attend courses at the police academy. They extensively study the question of torture and the overall protection of human rights in the following courses: criminology, psychology and rules for guard duties. Apart from the Convention, the provisions under other related Treaties are also studied. In the course of 1996, 74 members of the Justice police undertook special studies and 113 attended special courses.

110. The curriculum at the academy incorporates the study of the Convention against Torture and Other Cruel and Inhuman Treatment or Punishment into the following four legal subjects: police organization and work, tactics and criminal inquiries, military skills and protection of constitutional order.

111. Furthermore, the police undertake numerous measures on a daily basis, for the purpose of preventing any form of illegal practice and developing a new professional ethical code of the police, especially regarding the use of coercion - starting with the effective regulation of performance at all levels of work of the Ministry, successive professional training, an in-depth analysis of every case involving abuse, developing ways of effective performance, cooperation and trust between the police and citizens.

112. The Ministry of the Interior draws special attention to the legality and the use of police authority at all levels of work, especially in cases implying torture and other violent forms mentioned in the Convention. Owing to the introduction of a new system of ethics and taking various effective and institutionalized measures, in 1996 the overall situation was drastically improved, with a decline in the number of cases of illegal use of coercion.

113. Training courses for military police also draw special attention to humane treatment that has to be in accordance with behaviour that does not violate honour, reputation or dignity, as well as the personal integrity of individuals undergoing certain proceedings. Officials of the military police attend courses at the Military Police Educational Centre on substantive criminal law and on the Law on Criminal Procedure.

114. The prescribed use of force and means of coercion in the line of duty performed by military police officers, correspond to those used by the regular police force in the Republic of Croatia.

Article 11

115. Pursuant to article 39 of the Law on Government Administration and article 88 (a) of the Law on Execution of Sanctions Pronounced for Criminal Offences, Economic Transgressions and Petty Offences, the expert commission of the Ministry of Health regulates medical services in penitentiaries within the Republic of Croatia. Health care is provided by primary health-care units whereas specialized health care is provided by the prison hospital in Zagreb.

116. According to the findings by the Ministry of Health, hygiene conditions in the Lepoglava facilities have in general been satisfactory. Medical checkups are regular and the hospital has a good supply of medication. The food quality is satisfactory. The Charter on the Right of Patients is entirely complied with. Following a visit by the Commission and pursuant to their findings, overall action has been taken for the purpose of reconstructing adequate sanitary and hygiene facilities. However, it should be taken into account that Lepoglava prison is among the oldest prisons in Europe. Having regard to this, measures have been taken with a view to raising the quality of prisoners' accommodation with those stipulated by European standards.

117. Hygiene conditions in Pozega facilities (a women's penitentiary) have also been satisfactory, even better that those prescribed by strict legal provisions.

118. Reform of the Law on Internal Affairs has limited detention of citizens in police facilities from three days to one. Furthermore, reasons for detaining citizens are now restricted to the protection of human rights and freedom and public law and order, and public moral and health, with no possibility of extending them on discretionary grounds. Unlike previously, legal protection of the rights of the detained are guaranteed by the Constitutional Court of the Republic of Croatia.

119. Moreover, in accordance with the ongoing process of reforming criminal legislation with a view to ensuring better protection against police intrusion into fundamental human rights and freedoms, the police no longer have the authority to determine detention. This authority now lies under the jurisdiction of the courts, which is an additional guarantee as to the legality of this measure.

120. Regulation of the detention and treatment of detainees is carried out by the chief constable of the police station in question, who has to reach the decision and notify the detainee within six hours. The individual can file an appeal against the decision within six hours thereafter. The head of police administration will reach a decision on the appeal within six hours thereafter, respectively.

121. This procedure questions the legality of detention and the regularity of treatment towards the detainee who, in the case of this type of illegal treatment, with a special emphasis on illegal force, can seek the protection of the public attorney who will initiate the process of legal protection under criminal proceedings.

122. Determination of disciplinary culpability for members of the armed forces of the Republic of Croatia has been regulated by military discipline regulations. However, due to the need to coordinate these with the provisions of the Law on Armed Forces Service, a new Armed Forces Code of Conduct has been adopted. This new code has been coordinated with effective legislation of the Republic of Croatia and international conventions, especially those regarding the protection of human rights. This has proved to be an important factor in establishing normative conditions for determining responsibility regarding breaches of military discipline in the Croatian armed forces. These conditions are the results of a modern military power governed by relations based on Croatian tradition and the positive experience of armed forces in developed countries.

123. The Armed Forces Code of Conduct regulates the following fundamental issues: disciplinary measures and sanctions; authority for determining culpability for disciplinary breaches; institution and undertaking of disciplinary procedure; evaluation of the regularity of disciplinary measures, appeal procedures, implementation of disciplinary measures; authority for determining culpability for disciplinary offences; institution and implementation of disciplinary procedure regarding disciplinary offences; procedure regarding legal remedies; procedure for reducing, moderating or annulling disciplinary measures and sanctions; recording and eliminating disciplinary measures and sanctions, and deciding upon disciplinary culpability in the state of war.

124. It should be mentioned that the Law on Armed Forces Service stipulates that the Commander-in-Chief regulates: military discipline; disciplinary measures and sanctions for breaches of military discipline; authority and the procedure for determining breaches of military discipline; sanctioning with disciplinary measures and implementation thereof; implementation of authority, and organization and performance of military disciplinary tribunals.

Article 12

125. As stated in the previous report, in accordance with the Croatian legal system, the courts, public attorneys, police, ombudsmen and administrative bodies have jurisdiction for proceedings in cases of torture and other cruel, inhuman and degrading punishment and treatment proscribed by the Convention.

126. When implementing methods of coercion, according to Croatian regulations that are based on fundamental democratic standards, the police have to keep in mind that all such treatment has to have the fewest side-effects possible, with the preservation of life and dignity of all being respected. This is the fundamental starting point of police practice.

127. In practice, it is almost impossible to avoid wrong evaluation by authorized officials in all possible situations. But for every such case there is a strict control procedure in view of evaluating the legality of such action.

Article 13

128. If, in the course of utilizing permissible methods of coercion or generally in the course of the police action, there is an incidence of abuse of authority, the civilian has the right, pursuant to article 142 of the Law on Criminal Procedure, to file an appeal within three days to the public attorney responsible for determining the facts and instituting criminal proceedings.

129. If the said public attorney establishes that there is no grounds for prosecution, he/she has to notify the applicant within eight days. The applicant then has the right to institute independent criminal proceedings pursuant to the same procedural provisions. In 1996, the Department of Justice recorded 12 citizens' appeals to the public attorney within the meaning of article 142 of the above-mentioned Act, of which 11 were submitted to the Zagreb county public attorney office and one to the corresponding office in Split.

Article 14

130. In the Republic of Croatia, every person sentenced or found guilty has the right to compensation, within the meaning of article 528 of the Law on Criminal Procedure, in cases of acquittal. In 1996 and the first half of 1997, the Department of Justice did not record a single request for compensation regarding criminal acts against human and civil freedoms and rights.

131. Also pursuant to article 532 of the Law on Criminal Procedure, individuals who have been detained with no criminal charges being brought against them, or who have been acquitted by a court ruling, or individuals who have been serving prison sentence or whose prison sentence has been reduced, or individuals who have been unlawfully imprisoned due to an error by government bodies, or who have been unjustly detained longer, also have the right to compensation. The Department of Justice has recorded a small number of these requests.

132. In the case of the death of the applicant, his/her successors have the right to continue with or file a request for compensation, unless the said applicant revoked the request or unless the statutory limit of three years has expired.

133. If a case concerning an unjustified ruling has been published in the media which has violated the dignity of the said person, the person also has the right to a moral indemnity consisting of publishing a denial of the ruling in the papers or some other form of mass media. In case of the death of a person, this right is inherited by their spouse, children, parents, brothers or sisters. This request has to be submitted to the court within a period of six months from the date of acquittal and is not conditional upon filing a request for compensation.

134. A person unjustifiably convicted or imprisoned and who consequently has been dismissed from work or who has lost his right to social welfare, has the right to the years of service calculated for the period during which employment has been interrupted.

Article 15

135. Pursuant to effective constitutional provisions, the Republic of Croatia does not acknowledge illegally obtained evidence which is also regulated by the Law on Criminal Procedure. This law prohibits the use of evidence obtained by means of coercion, fraud or any other similar means. Moreover, this law prescribes that records of those hearings be excluded from the case before the court hearing commences. However, if a ruling by a criminal court is based on such unlawful evidence, the ruling has to be withdrawn during appeal proceedings.

136. According to the official records of the Department of Justice, approximately 20 per cent of all rulings of county courts are withdrawn per annum, but there are no records concerning cases where rulings are withdrawn on the basis of unlawfully obtained evidence. However, empirical research carried out in 1994 at the Faculty of Law, University of Zagreb, showed that 2 per cent of such cases in the county court of Zagreb (the biggest county court in the Republic of Croatia) were withdrawn, which is regarded as a realistic estimate for the previous year, too.

Article 16

137. Pursuant to democratic practices, while collecting information on a crime, an authorized police official can ask information from the detained or imprisoned individual only if such questioning has been approved by the investigating judge or the head of the institution where the said individual is situated.

138. In view of protecting the freedoms and rights of people and law and order, an authorized official can retain an individual threatening these freedoms and rights for only 24 hours. If the detainee is a foreign national, the appropriate embassy has to be immediately notified.

139. In performing their duties, police officials are authorized to use force (physical force, a truncheon, water spray, firearms, etc.) if they cannot perform their official duties in any other way. The scope and form of such measures of coercion have to comply with the given situation and, before implementing them, police officials have to warn the individual in question. If means of coercion have been used pursuant to the legal framework, the police official is not liable. However, if they have been used illegally, the said police official will be subject to disciplinary measures and criminal responsibility.

140. The Law on Internal Affairs precisely regulates the very sensitive field of the methods of coercion, including a very strictly prescribed use of firearms.

141. Authorized officials may use firearms only in cases that are specifically stated in the Law on Internal Affairs and relate to situations when officials can by no other means: protect the lives of people; prevent the escape of an individual caught while committing a crime which threatens territorial integrity, endangering military and defence capacities; prevent violence stemming from hostile motives towards the Republic of Croatia, armed rebellion, terrorism, destruction of important industrial facilities, violation of territorial integrity; prevent the escape of an individual caught while committing criminal acts of hijacking an aircraft, endangering the security of an aircraft during flight, murder, rape, aggravated theft, violent theft or robbery; prevent the escape of an imprisoned individual or an individual for whom an arrest warrant has been issued on the grounds of committing these crimes; prevent the escape of an individual who has tried to cross the national border illegally in a vehicle and who refuses to act upon the order of the authorized official; respond to a direct assault on his/her own integrity that endangers his/her life, or respond to an attack on any other person or facility that they secure.

142. If the situation makes it possible, prior to the use of firearms, authorized officials have a duty to warn individuals about the possible use of firearms against them or about the use of firearms for the purpose of scaring them. While using firearms, the authorized official is under a duty to preserve the lives of bystanders.